Supreme Court, U.S.
FILED

(1)

97 750 OCT 31 1997

No. 97- OFFICE OF THE CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

STATE OF ALASKA,
Petitioner,

v.

UNITED STATES,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

JOHN G. ROBERTS, JR.
GREGORY G. GARRE
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5810

CHARLES E. COLE
406 Cushman Street
Fairbanks, Alaska 99701
(907) 452-1124

* Counsel of Record

BRUCE M. BOTELHO *
Attorney General
ELIZABETH J. BARRY
JOANNE M. GRACE
Assistant Attorneys General
STATE OF ALASKA
Department of Law
P.O. Box 110300
Juneau, Alaska 99811
(907) 465-3600

Counsel for Petitioner

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

13188

QUESTIONS PRESENTED

On August 26, 1958, the people of Alaska voted to ratify the Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339 (1958) ("Statehood Compact"), paving the way for Alaska's admission to the Union as the Nation's 49th State. In this case, the State of Alaska seeks to enforce a promise in the Statehood Compact to pay Alaska 90 percent of all revenues derived from federal mineral leases in Alaska. This promise—along with the land grant and other revenue grants contained in the Compact—was key to alleviating the oft-expressed objection that the new State would lack the financial wherewithal to govern itself. The Federal Circuit below rejected Alaska's claim, freeing the United States unilaterally to alter the terms pursuant to which Alaskans accepted statehood. The questions presented are:

1. Whether the Court should clarify the principles governing the construction and enforceability of statehood compacts and make clear that, when ratified by the people, statehood compacts—like interstate compacts—establish binding and enforceable agreements that should be interpreted as both a contract and a statute;

2. Whether the Federal Circuit below correctly held that the United States may unilaterally restrict the State's 90 percent share of all federal mineral leasing revenues in Alaska, and forego development of this important revenue source, despite the promise embodied in the Statehood Compact to make such revenues available to Alaska in exchange for its assumption of the permanent costs and obligations of statehood; and

3. Whether, in construing the Statehood Compact, the Federal Circuit below correctly discounted extrinsic evidence of the parties' intent in entering into the Compact, including representations made by the Secretary of the Interior to the people of Alaska on the eve of the statehood referendum as to the meaning of the Compact.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
INTRODUCTION	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	13
CONCLUSION	29
APPENDICES	
APPENDIX A:	
Opinion of the Court of Appeals for the Federal Circuit, filed July 8, 1997	1a
APPENDIX B:	
Opinion of the Court of Federal Claims, filed May 31, 1996	2a
APPENDIX C:	
Judgment of the Court of Appeals for the Federal Circuit, dated July 8, 1997	47a
APPENDIX D:	
Order granting extension of time to file petition for certiorari, filed September 22, 1997	48a

TABLE OF CONTENTS—Continued

APPENDIX E: Page

Pertinent statutory provisions 49a

APPENDIX F:

Transcripts of August 23 and 25, 1958 addresses by Secretary Fred A. Seaton 80a

TABLE OF AUTHORITIES

CASES: Page

Alaska v. *Andrus*, 429 F. Supp. 958 (D. Alaska 1977), *aff'd*, 591 F.2d 537 (9th Cir. 1979) 18
Aluminum Co. of Am. v. *Central Lincoln Peoples' Util. Dist.*, 467 U.S. 380 (1984) 21
Andrus v. *Utah*, 446 U.S. 500 (1980) 14
Arizona v. *California*, 292 U.S. 341 (1934) 19
ASARCO, Inc. v. *Kadish*, 490 U.S. 605 (1989) 15
Beecher v. *Wetherby*, 95 U.S. 517 (1877) 14
Cooper v. *Roberts*, 59 U.S. (18 How.) 173 (1855) .. 14, 25
Coyle v. *Smith*, 221 U.S. 559 (1911) 18
Idaho v. *Coeur d'Alene Tribe of Idaho*, 117 S. Ct. 2028 (1997) 26
Lassen v. *Arizona ex rel. Arizona Highway Dep't*, 385 U.S. 458 (1967) 18, 22
Neil, Moore & Co. v. *Ohio*, 44 U.S. (3 How.) 720 (1845) 19
New Jersey v. *New York*, No. 120, 1997 WL 291594 (Mar. 31, 1997) (special master report), 66 U.S.L.W. 3202 (Sept. 29, 1997) 23, 24
Oklahoma v. *New Mexico*, 501 U.S. 221 (1991) ..... *passim*
Organized Village of Kake v. *Egan*, 369 U.S. 60 (1962) 11, 19
Rowe v. *United States*, 464 F. Supp. 1060 (D. Alaska 1979), *aff'd in part and rev'd in part on other grounds*, 633 F.2d 799 (9th Cir. 1980), *cert. denied*, 451 U.S. 970 (1981) 21
Searight v. *Stokes*, 44 U.S. (3 How.) 151 (1845) 19
State v. *Gallant*, 764 P.2d 920 (Or. 1988) 20
State v. *Lewis*, 559 P.2d 630 (Alaska), *cert. denied*, 432 U.S. 901 (1997) 20
Stearns v. *Minnesota*, 179 U.S. 223 (1900) 14, 15
Texas v. *New Mexico*, 462 U.S. 554 (1983) 19
Texas v. *New Mexico*, 482 U.S. 124 (1987) 15
United States v. *Alaska*, 117 S. Ct. 1888 (1997) 26
United States v. *Atlantic Richfield Co.*, 435 F. Supp. 1009 (D. Alaska 1977), *aff'd*, 612 F.2d 1132 (9th Cir.), *cert. denied*, 449 U.S. 888 (1980) 21

TABLE OF AUTHORITIES—Continued

	Page
United States v. *Sweet*, 245 U.S. 563 (1918)	18, 22
United States v. *Winstar Corp.*, 116 S. Ct. 2432 (1996)	19
United States v. *Wyoming*, 331 U.S. 440 (1947)	18, 19, 21
West Virginia ex rel. Dyer v. *Sims*, 341 U.S. 22 (1951)	15
STATUTES:	
28 U.S.C. § 1254(1)	2
28 U.S.C. § 1491(a)(1)	9, 27
Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339 (1958)	2
§ 8(b), 72 Stat. 343-345	7, 16
§ 28(a), 72 Stat. 351	5
§ 28(b), 72 Stat. 351-352	*passim*
Mineral Leasing Act of 1920, 30 U.S.C. § 191 (1952)	2, 4
Pub. L. No. 101-512, 104 Stat. 1915 (1990)	9
Pub. L. No. 102-154, 105 Stat. 990 (1991)	9
Pub. L. No. 102-381, 106 Stat. 1374 (1992)	9
Pub. L. No. 103-66, § 10201(2), 107 Stat. 407 (1993)	9
CONSTITUTION:	
U.S. Const. art. I, § 10, cl. 3	15
U.S. Const. art. IV, § 3, cl. 1	2, 3
LEGISLATIVE MATERIALS:	
H.R. Rep. No. 85-156 (1957)	5
H.R. Rep. No. 85-624 (1957)	16
S. Rep. No. 85-1163 (1957)	5, 6, 16, 27
Alaska Statehood: Hearings on S. 49 and S. 35 Before the Senate Comm. on Interior and Insular Affairs, 85th Cong. (1957)	4
104 Cong. Rec. 9344 (May 22, 1958)	5
104 Cong. Rec. 9361 (May 22, 1958)	6
104 Cong. Rec. 9501 (May 26, 1958)	17
104 Cong. Rec. 12015-16 (June 24, 1958)	17

TABLE OF AUTHORITIES—Continued

	Page
104 Cong. Rec. 12032 (June 24, 1958)	12
104 Cong. Rec. 12047 (June 24, 1958)	17
104 Cong. Rec. 12207-08 (June 25, 1958)	6
104 Cong. Rec. 12297 (June 26, 1958)	5
104 Cong. Rec. 12316-17 (June 26, 1958)	17
104 Cong. Rec. 12442 (June 27, 1958)	6
104 Cong. Rec. 12453 (June 27, 1958)	16
104 Cong. Rec. 12458 (June 27, 1958)	16
OTHER AUTHORITIES:	
Alaska Att'y General Op. No. J-66-556-81 (Apr. 2, 1981)	17
George Ticknor Curtis, *Admission of Utah: Limitation of State Sovereignty by Compact with the United States* (1887)	26
The Federalist No. 43	13
No Tax Boost Seen Due to Statehood, Anchorage Daily Times, July 14, 1958	8
Restatement (Second) of Contracts (1979)	19
State Government Costs Seen Less Than Territory, Anchorage Daily Times, June 27, 1958	8
Statehood Facts/State Revenues are Higher, Anchorage Daily Times, Aug. 21, 1958	8
Robert L. Stern, Eugene Gressman, Stephen M. Shapiro & Kenneth S. Geller, *Supreme Court Practice* (7th ed. 1993)	27
This One Word Quiz Can Prove Helpful, Anchorage Daily Times, Aug. 16, 1958	8
U.S. Department of the Interior, *Kaktovik Subsurface Valuation Report* (1983)	21
U.S. Department of the Interior, Minerals Management Service Alaska OCS Region, *Alaska Nets $5.1 Million as State's Share of Federal Mineral Revenues in 1994*, News Release, Jan. 26, 1995	20

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

No. 97——

STATE OF ALASKA,

Petitioner,

v.

UNITED STATES,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

---

PETITION FOR A WRIT OF CERTIORARI

The State of Alaska respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeals for the Federal Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is unreported and reprinted in the appendix hereto ("App.") at 1a. That opinion affirmed the decision of the Court of Federal Claims granting summary judgment for respondent, which is reported at 35 Fed. Cl. 685 and reprinted at App. 2a.

JURISDICTION

The judgment of the Court of Appeals was entered on July 8, 1997. App. 1a, 47a. On September 22, 1997, the Chief Justice entered an order extending the time to petition for certiorari to and including November 5, 1997.

Id. 48a. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 3 of Article IV of the Constitution provides in pertinent part: "New States may be admitted by the Congress into this Union." U.S. Const. art. IV, § 3, cl. 1. The Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339 (1958) ("Statehood Compact" or "Compact"), and pertinent provisions of the Mineral Leasing Act of 1920 ("MLA"), 30 U.S.C. § 191, and amendments thereto, are reprinted at App. 49a-79a.

INTRODUCTION

This case involves a dispute between the State of Alaska and the United States over the construction and enforceability of the Compact establishing the terms and conditions of Alaska's admission to the Union as the Nation's 49th State. The stakes—including the State's right to receive an agreed upon share of the millions of dollars of revenues derived from federal mineral leases in Alaska —are of enormous importance to Alaska, a State with an historically narrow tax base. But the significance of this case is much broader. Both existing and future States have a compelling interest in seeing not only that the United States honors the terms and conditions of statehood compacts, but that the principles governing the construction and enforceability of such compacts are clear to all, especially the people contemplating the momentous decision of statehood. The Court should grant certiorari to clarify those fundamental principles, and to review their application to the Statehood Compact here.

STATEMENT OF THE CASE

1a. Alaska's admission to the Union did not come naturally. Its purchase in 1867 for $7.2 million was viewed by many in its day as "folly." It was not formally

organized as a federal territory until almost half a century later, and was not seriously considered as a candidate for statehood until after World War II. App. 3a-4a. Even then, several major objections to statehood existed, including that Alaska was geographically separated from the contiguous United States, had a small population base (fewer than 200,000), and—due to its relatively undeveloped economy and meager population—had questionable financial means to govern itself. *See id.* 7a-8a. Because there was little that could be done about Alaska's location and—at least in the short term—its population base, statehood advocates focused on a "legislative fix" to the remaining objection that would ensure that a fledgling State of Alaska had the financial wherewithal to govern itself. *Id.* 9a. Congress' efforts to supply that "fix"—and thus secure Alaska statehood—are the root of this dispute.

b. In the decade preceding passage of the Alaska Statehood Act in 1958, the package of benefits accompanying statehood was made progressively more generous to garner the support necessary to secure statehood. The first major proposal—included in statehood bills as early as 1953—was to increase by several fold the size of the land grant to the new State to about 100 million acres, roughly the amount Alaska was eventually entitled to select under the Compact. *Id.* 10a-11a. But "[e]ven with the power to choose such an unprecedented amount of land, and the fact that the conveyances included the mineral as well as surface estates, it was feared that the land grants would not be effective." *Id.* 11a (footnote omitted). As a result, statehood advocates added even more direct means of channeling revenue to the new State, including provisions entitling Alaska to 5 percent of the net proceeds from the sale of federal lands in Alaska, and 70 percent of the net proceeds from the sale of natural resources harvested on certain federal lands. *Id.* 13a, 53a-54a.

In 1957—on the heels of Alaska's first major oil strike—a new and lucrative benefit was added to the statehood package: a 90 percent share of all revenues derived from

operation of the mineral leases on the more than 250 million acres of federal land in Alaska. *Id.* 13a-14a. At the time this benefit was added, each of the existing States was entitled under the Mineral Leasing Act of 1920 ("MLA"), 30 U.S.C. § 191 (1952), to 37½ percent of "[a]ll money received" from mineral leases on federal land within their borders. In addition, 52½ percent of these revenues was deposited into a reclamation fund that indirectly benefited the States. The remaining 10 percent of these revenues was used to pay the federal government's cost of administering the MLA. In 1947 Congress amended the MLA to give the Territory of Alaska a 37½ percent share of all federal mineral leasing reveneus generated within the Territory. But because Alaska was not entitled to participate in the reclamation fund, it did not receive the additional 52½ percent indirect interest in such revenues enjoyed by the existing States. *See* App. 14a-15a.[1]

The "90 percent" provision was proposed by Alaska Delegate Bartlett and offered as an amendment to the 1957 statehood bill by Senator Barrett of Wyoming. Its purpose was to "give the Territory now and the State of Alaska-to-be ninety percent of the income from the minerals under the Leasing Act royalties that come in *from now on out*," in order to give the State "a chance to develop and to become one of the strong States of the Union." *Alaska Statehood: Hearings on S. 49 and S. 35 Before the Senate Comm. on Interior and Insular Affairs*, 85th Cong. 30-31 (1957) (Sen. Barrett) (emphasis added). The Department of the Interior—which sup-

---

[1] Prior to 1957, Section 35 of the MLA provided in pertinent part:

> All money received from sales, bonuses, royalties, and rentals of public lands * * * shall be paid into the Treasury of the United States; 37½ per centum thereof shall be paid * * * each year to the State or the Territory of Alaska within the boundaries of which the leased lands or deposits are located * * *; and, excepting those from Alaska, 52½ per centum thereof shall be paid into, reserved and appropriated, as a part of the reclamation fund created by [the Reclamation Act of 1902, 43 U.S.C. § 372 *et seq.*]. [30 U.S.C. § 191 (1952).]

ported Alaska statehood—agreed that this provision belonged in the statehood bill. *See id.* at 31, 67; H.R. Rep. No. 85-156, at 2-3 (1957). When it became apparent that the time was not ripe for Alaska statehood in 1957, Congress nevertheless laid the groundwork for this significant revenue grant by amending the MLA to give Alaska an additional 52½ percent share of all federal mineral leasing revenues, bringing the Territory's total share of such revenues to 90 percent. *See* App. 16a-17a. No existing State or Territory received such a direct 90 percent share of federal mineral leasing revenues.

Although it had already become law as an amendment to the MLA, Congress incorporated the 90 percent provision in the 1958 statehood bill—the bill that formed the Compact. *Id.* 17a. Thus, Section 28(b) of the 1958 statehood bill further amended the MLA to ensure that the new State would receive the 90 percent share of federal mineral leasing revenues.[2] The legislative record indicates that Congress viewed this provision as a "major" component of the 1958 statehood bill, included to ensure that "the additional costs connected with statehood [would] be met." S. Rep. No. 85-1163, at 2-3 (1957). *See also* 104 Cong. Rec. 9344 (May 22, 1958) ("a certain amount of th[e] total added expense [of statehood] would be offset by * * * Alaska receiving 90 percent of the revenue from oil and gas leases") (Rep. Saylor); *id.* at 12297 (June 26, 1958) (under the statehood bill, Alaska "would be granted * * * [n]inety percent of the profits from Government coal mines and operations under

---

[2] Section 28(b) provided: "Section 35 of the [MLA], approved February 25, 1920, as amended (30 U.S.C. 191), is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ', and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof.'" 72 Stat. at 351.

Section 28(a) amended 48 U.S.C. § 439 (1952) to guarantee that the new State would receive 90 percent of "'[a]ll *net* profits from operation of [federal coal] mines.'" 72 Stat. at 351 (emphasis added) (quoting Section 439). Section 28 of the Compact is quoted in full at App. 73a.

the [MLA]") (Sen. Talmadge); App. 31a (citing additional materials).[3]

When it enacted the 1958 statehood bill, Congress understood that the bill's revenue grant provisions—including Section 28(b)—were not only fundamental to the Compact but necessary to the survival of a new State of Alaska. *See* 104 Cong. Rec. 9361 (May 22, 1958) ("These provisions are the foundation upon which Alaska can and will build to the enormous benefit of the national economy shared by her sister States. We cannot make Alaska a 'full and equal' State in name and then deny her the wherewithal to realize that status in fact.") (Rep. Dawson).[4] Indeed, even with the land and revenue grants contained in the Compact, some Congressmen still doubted the financial viability of a State of Alaska. *See id.* at 12442 (June 27, 1958) ("I am worried about making a State of Alaska, knowing the distressed financial condition in which the State will be.") (Rep. Johnston); S. Rep. No. 85-1163, *supra*, at 12; App. 5a n.2. As reflected by letters and newspaper articles reprinted in the *Congressional Record*, many Alaskans shared these sentiments. *See* App. 5a-6a n.3.

---

[3] In addition, during the debate on the 1958 bill, statehood proponents relied upon an analysis prepared by the Department of the Interior outlining the new sources of revenue that would be available to Alaska under the 1958 bill, including "[o]il and gas leases (90 percent to the State)." 104 Cong. Rec. 12208 (June 25, 1958) (Sen. Church). As Senator Church explained, the purpose of the Department's analysis was to "show[] precisely what the additional costs for statehood would be, and what the additional income to the newly formed State government would be by virtue of the provisions contained in the pending bill." *Id.* at 12207.

[4] *See also* 104 Cong. Rec. 12208 (June 25, 1958) (the revenue provisions will "have a tremendous impact on the ability of the new State to provide the essential resources to support itself") (Sen. Jackson); S. Rep. No. 85-1163, *supra*, at 3 (stating that "[s]ome of the additional costs connected with statehood will be met by granting the State a reasonable return from Federal exploitation of resources within the new State," and specifically referencing the 90 percent provision).

A majority of Congress was nevertheless persuaded that under the terms of the Compact the new State would be financially viable, and, on July 7, 1958, passed the Alaska Statehood Act.

c. The Act's enactment by no means completed the statehood process. Before Alaska could enter the Union, the Compact by its terms required ratification by the "said State and its people." Alaska Statehood Act, § 8(b), 72 Stat. 344.[5] Thus, having secured the federal government's consent to the terms of Alaska statehood, statehood proponents—including the Department of the Interior—focused on obtaining the people's consent in a Territory-wide referendum scheduled for August 26, 1958. To this end, Secretary of the Interior Fred A. Seaton—"a major proponent of statehood"—traveled to Alaska. *Id.* 21a. On the eve of the referendum, he "gave numerous speeches in support of statehood, and, in the process, gave his views on what statehood would mean for Alaska." *Id.* Secretary Seaton made clear his mission, informing Alaskans that, in view of the Department's role "in successfully piloting the Alaska statehood bill through the Congress," he was there "to make clear the effect of the Enabling Act and the propositions upon which [Alaskans] will vote [on statehood]." *Id.* 88a.[6]

Secretary Seaton sought to alleviate Alaskans' concerns about the ability of the new State financially to sustain

---

[5] Specifically, the Statehood Act provided that Alaska could only become a State if a majority of Alaskans voted affirmatively on three propositions reprinted at App. 58a-59a, including that: "All provisions of the [Statehood Act] * * * prescribing the terms or conditions of the grants of lands or *other property* therein made to the State of Alaska, are consented to fully by said State and its people." Alaska Statehood Act, § 8(b), 72 Stat. 344 (emphasis added). The phrase "other property" subsumed the Compact's revenue grants, including the 90 percent provision embodied in Section 28(b).

[6] Transcripts of two of Secretary Seaton's speeches during this swing are reprinted at App. 80a-94a. These transcripts also appear at pages A734-A744 of the Federal Circuit Appendix.

self-government by touting the revenue grants embodied in the Compact—including the 90 percent provision. Thus, for example, during a speech made in Anchorage on August 25, 1958, the Secretary stated: "[T]he [Statehood] Act reaffirms Alaska's *preferential treatment* in receiving 90 percent of all revenues from oil, gas, and coal leasing on the public domain." *Id.* 94a (emphasis added). During the same week, he told a Fairbanks audience: "Since early this year the Territory has received 90 percent of all oil lease revenues; the State of Alaska *will continue to do so.*" *Id.* 84a (emphasis added). Secretary Seaton further reassured Alaskans that, "[a]ccording to an analysis prepared in the Department of the Interior, the additional costs of State Government will be more than offset by the additional revenues made available to Alaska. This fact should be made plain to everyone." *Id.* 94a. That analysis specifically took into account Alaska's entitlement to 90 percent of all federal mineral leasing revenues generated in the new State. *See* note 3, *supra.*[7]

In the plebiscite held on August 26, 1958, Alaskans voted to accept statehood and ratified the Compact as well as each of the specific propositions put to them. On January 3, 1959, President Eisenhower officially certified Alaska as the Nation's 49th State. App. 23a.

d. In accordance with the terms of the Statehood Compact and Alaska's expectations under that agreement, the new State received "substantial" federal mineral leasing revenues, *id.*, including—from 1958 to 1990—"90

[7] Both Secretary Seaton's remarks and the Department's conclusion that the additional costs of statehood would be offset by the Compact's revenue provisions were widely reported in Alaska. *See, e.g., This One Word Quiz Can Prove Helpful,* Anchorage Daily Times, Aug. 16, 1958 (Fed. Cir. App. A727); *Statehood Facts/State Revenues are Higher,* Anchorage Daily Times, Aug. 21, 1958 (Fed. Cir. App. A730); *State Government Costs Seen Less Than Territory,* Anchorage Daily Times, June 27, 1958 (Fed. Cir. App. A721); *No Tax Boost Seen Due to Statehood,* Anchorage Daily Times, July 14, 1958 (Fed. Cir. App. A723).

percent of the gross proceeds from oil and gas leases on federal lands located within Alaska." *Id.* 17a n.12. Over time, however, this important revenue stream has been restricted, as the number of federal mineral leases in Alaska has been "drastically reduced" by the United States. *Id.* 23a. This is not for want of leasable land; in fact, Congress has refused to act on the Secretary of the Interior's recommendation to open up additional federal lands in Alaska to oil and gas exploration. *Id.* 24a-25a. In addition, in 1991 Alaska's 90 percent share of the dwindling federal mineral leasing revenues was suddenly changed from gross to *net*, as Congress for the first time began to deduct the federal government's costs of administering the MLA before distributing the amounts owed to Alaska and the other States.[8] This alteration further decreased Alaska's share of such revenues by millions of dollars. *Id.* 26a-27a.

2a. In July 1993, the State of Alaska brought this action in the Court of Federal Claims pursuant to 28 U.S.C. § 1491(a)(1), alleging that the United States had reneged on its obligations under the Compact and, more particularly, had breached the promise embodied in Section 28(b) of the Compact to pay Alaska 90 percent of all revenues derived from federal mineral leases in Alaska.[9] On cross-motions for summary judgment, the

---

[8] In the appropriation bills governing the Department of the Interior for fiscal years 1991, 1992, and 1993, Congress directed that half of the federal government's administrative expenses be deducted from all federal mineral leasing revenues prior to the calculation of the amounts owed to the States under Section 191 of the MLA. *See* Pub. L. No. 101-512, 104 Stat. 1915, 1925-26 (1990); Pub. L. No. 102-154, 105 Stat. 990, 1000-01 (1991); Pub. L. No. 102-381, 106 Stat. 1374 (1992). In 1993 Congress amended the MLA itself to provide for the calculation of the States' share of such revenues in the same fashion. Pub. L. No. 103-66, § 10201(2), 107 Stat. 407 (1993).

[9] The Complaint also alleged, *inter alia*, that the United States had breached an implied promise in Section 28(b) of the Compact to develop federal mineral lands in Alaska in order to ensure that

State "aske[d] the court to determine if the [Compact] is a binding and enforceable contract between it and the United States, and whether or not the United States has breached its obligation under section 28(b) of the [Compact]." App. 2a. In response, the United States argued "that section 28(b) is not an enforceable provision," and, in any event, does not constitute "a promise to grant Alaska ninety percent of gross mineral leasing revenues." *Id.* 27a-28a. In May 1996, the Court of Federal Claims denied the State's limited request for summary judgment and, instead, granted judgment for the United States on the entirety of Alaska's complaint. *Id.* 46a.

b. The Court of Federal Claims expressly rejected the United States' "contention that section 28(b) was not a substantive part of the compact," finding that "[i]t was plainly viewed as one component in an effort to ensure that Alaska was financially viable," and "clearly was part of a group of provisions that, together, ensured the financially viability of Alaska." *Id.* 33a. The threshold question, the court said, was whether this provision was enforceable against the United States. The court noted the doctrinal confusion engulfing this issue, explaining that "[t]he Supreme Court has not utilized a strict taxonomy in dealing with the interpretation of statehood acts." *Id.* 28a. After struggling with this issue, the court declined "to decide with any exactitude whether Section 28(b) should be construed as a binding contract or as mere legislation." *Id.* 34a. Instead, the court simply presumed that "Section 28(b) is a contractually enforceable provision of the Stateood Act," then turned to "what does Section 28(b) mean?" *Id.*

---

adequate revenues would be available to the new State and, by withdrawing certain federal lands from mineral leasing, had effected a constitutionally proscribed taking of Alaska's interest in mineral leasing revenues under the Compact. *See* App. 3a n.1. The Court of Federal Claims rejected these claims, refusing to find in Section 28(b) a "duty to develop the federal mineral lands in Alaska," and concluding that, in the absence of any such obligation, "no property interest was taken." *Id.* 44a & 45a n.38.

The critical issue in resolving that question was the weight to accord "the circumstances surrounding passage of the Statehood Act and the subsequent plebiscite," especially Secretary Seaton's statements as to the Compact's revenue grant provisions. *Id.* 35a. Here, the court acknowledged that this Court had held in *Organized Village of Kake* v. *Egan*, 369 U.S. 60, 65 (1962), that the Alaska Statehood Compact "must be construed in light of the circumstances of its formulation and enactment." App. 37a n.35. But the Court of Federal Claims nevertheless concluded that the "circumstances" relied upon by the State in this case—including what the court referred to as Secretary Seaton's "barnstorm[ing] the Territory in the weeks before the plebiscite urging ratification" on the ground that, among other things, "Alaska would get 90 percent of mineral leasing revenues"—were entitled to little if any weight in construing the Compact. *Id.* 35a-36a. Instead, the court dismissed these statements as mere "salesmanship," "not meant as literal promises or statutory construction," *id.* 36a, and held that the focus of the analysis should be on the Compact and its *legislative* history. *Id.* 36a-37a & n.35. The Court thus effectively eliminated any meaningful consideration of the understanding of the people of Alaska in ratifying the Compact.

The court also rejected Alaska's argument that the United States breached the promise embodied in Section 28(b) by unilaterally changing the formula for calculating the federal mineral leasing revenues to which the State was entitled from gross to net revenues. Here, the court agreed that the Compact "undisputably" gave Alaska a 90 percent share of gross federal mineral leasing revenues, *id.* 39a, observing that "[p]resumably Congress knew what it was doing in using 'net' in section 28(a) but not so limiting section 28(b)." *Id.* 37a-38a; *see* note 2, *supra*. As the court recognized, both the legislative record of the Statehod Act and the federal government's long-standing construction of the MLA support

this conclusion. *See* App. 38a-39a, discussing 104 Cong. Rec. 12032 (June 24, 1958) ("Last year, Congress, in anticipation of statehood * * * awarded Alaska 90 percent of *gross receipts* from the oil, gas, and coal leases on the public domain") (Sen. Robertson) (emphasis in Court of Federal Claims decision); App. 39a ("Section 28(b) * * * plugged Alaska into 30 U.S.C. § 191, which was then calculated based on gross receipts").

Nevertheless, "the court [held] that there was no promise on the part of the Federal Government to pay Alaska, in perpetuity, 90 percent of gross mineral leasing revenues from federal mineral leases in Alaska," App. 40a, because, in the end, the court refused to construe the Compact in a manner that would give Alaska an "advantage" over other States—whose stream of federal mineral lease revenues under the MLA had also been diminished by Congress from gross to net. *See id.* 39a-40a. But the federal government had not promised any of the other States a fixed stream of federal mineral leasing revenues as a condition of their admission to the Union; instead, the other States' entitlement to such revenues flowed solely from the MLA without incorporation in any statehood compact. Thus, in fact, the court declined to treat the Alaska Statehood Compact any differently than the MLA itself.

c. The State of Alaska filed a timely appeal. Notwithstanding the enormous consequences of this case to Alaska and the general importance of the questions presented, the Court of Appeals for the Federal Circuit on July 8, 1997, issued a one-page *per curiam* opinion, summarily affirming the Court of Federal Claims decision. App. 1a. On September 22, 1997, the Chief Justice entered an order extending the time to petition for certiorari to and including November 5, 1997. *Id.* 48a.

REASONS FOR GRANTING THE WRIT

1. Section 3 of Article IV of the Constitution authorizes Congress to admit new States to the Union. *See* U.S. Const. art. IV, § 3, cl. 1. Underlying this grant of authority is the important precondition that new States may be admitted only if their people so desire. As Madison put it, "[t]he general precaution that no new States shall be formed, without the concurrence of the federal authority *and* that of the States concerned, is consonant to the principles which ought to govern such transactions." *The Federalist No. 43* (emphasis added). Few agreements are of greater moment in the annals of this Nation than the compact by which a State gains its admission to the Union. Places with names like Antietam and Gettysburg bear witness to the momentous and irrevocable nature of such agreements from the standpoint of the States that have joined the Union. This case presents basic questions concerning the construction and enforceability of statehood compacts, and whether they are equally binding on the United States.

The questions presented are extraordinarily important. For Alaska, this case will resolve once and, practically speaking for all the enforceability of the United States' obligation under the Statehood Compact to pay the State a specified share of federal mineral lease revenues, a stream of income that both the United States and Alaska recognized at the time they agreed to the Compact was key to the financial viability of the new State. Moreover, while this case arises because Congress unilaterally altered Alaska's 90 percent share of such revenues from gross to net, its resolution effectively will determine whether Congress is free to reduce Alaska's share of such revenues from 90 percent to zero. Still, a great deal more is at stake. All States—not to mention the existing territories or commonwealths that may be contemplating statehood—have a compelling interest in the demarcation of a clear set of principles governing the construction and enforceability of

statehood compacts. The Court should grant certiorari to clarify these fundamental principles, and to review their application to the Statehood Compact here.

2. This Court has made clear that the United States may enter into agreements with the sovereign States upon their admission to the Union. As the Court observed in *Stearns* v. *Minnesota*, 179 U.S. 223, 245 (1900), "[t]hat a State and the nation are competent to enter into an agreement of such a nature with one another has been affirmed in past decisions of this court, and that they have been frequently made in the admission of new States, as well as subsequently thereto, is a matter of history." Such agreements are embodied in the acts by which Congress authorizes the admission of new States, which establish the terms and conditions of statehood and require ratification by the people of the new States. The parties fundamentally disagree over the nature of such compacts: Alaska asserts that they should be treated as both a contract and a statute, placing binding obligations on both parties; whereas the United States asserts that they should be viewed simply as statutes, freely alterable by subsequent Congresses. As the Court of Federal Claims observed, "[t]he Supreme Court has not utilized a strict taxonomy in dealing with the interpretation of statehood acts," App. 28a, creating confusion and uncertainty as to the construction and enforceability of these extraordinary acts.

This Court has characterized the land grant provisions of statehood acts as a " 'solemn agreement' which in some ways may be analogized to a contract between private parties," *Andrus* v. *Utah*, 446 U.S. 500, 507 (1980), and as "an unalterable condition of the admission, obligatory upon the United States." *Beecher* v. *Wetherby*, 95 U.S. 517, 523 (1877). This obligation arises upon the people's ratification of the compact. As the Court observed in *Cooper* v. *Roberts*, 59 U.S. (18 How.) 173, 178 (1855), "[p]roposals were made to the inhabitants of the incipient State to become a sovereign community, and

to accept certain articles as the conditions of union, which, being accepted, were to become obligatory upon the United States." *See Stearns* v. *Minnesota*, 179 U.S. at 244. *Cf. ASARCO, Inc.* v. *Kadish*, 490 U.S. 605, 632 (1989) ("Congress could not, for instance, grant lands to a State on certain specific conditions and then later, after the conditions had been met and the lands vested, succeed in upsetting settled expectations through a belated effort to render these conditions more onerous.").

In a similar vein, this Court has held that the compacts entered into between the sovereign States and approved by Congress pursuant to the Compact Clause of the Constitution (Art. I, § 10, cl. 3) are "both a contract and a statute." *Oklahoma* v. *New Mexico*, 501 U.S. 221, 235 n.5 (1991). *See also id.* at 242 (Rehnquist, C.J., joined by O'Connor, Scalia, and Kennedy, JJ., concurring in part and dissenting in part) ("An interstate compact, though provided for in the Constitution, and ratified by Congress, is nonetheless essentially a contract between the signatory States"); *Texas* v. *New Mexico*, 482 U.S. 124, 128 (1987) ("A Compact is, after all, a contract.") (internal quotation marks and citation omitted); *West Virginia ex rel. Dyer* v. *Sims*, 341 U.S. 22, 28 (1951) ("an agreement solemnly entered into between States * * * can [not] be unilaterally nullified, or given final meaning by an organ of one of the contracting States"). As is aptly illustrated by the Compact at issue in this case, statehood compacts—which are also embodied in legislation approved by Congress—share the same contractual attributes as interstate compacts.

Consideration is plainly present. Through the Alaska Statehood Compact, Alaska, on the one hand, gained admission to the Union and was promised certain land and revenue grants in exchange for agreeing to assume the permanent costs and obligations of statehood; the United States, on the other hand, was strengthened by the admission of the Nation's 49th State and at the same

time relieved of its own financial burden and obligations in governing the former Territory. Congress itself recognized this when it deliberated on Alaska statehood. *See* H.R. Rep. No. 85-624, at 9 (1957) ("[T]he grant of statehood will mean some saving to the Federal Government as the people of Alaska take over part of the burden of supporting certain governmental functions now borne by the United States Treasury."); S. Rep. No. 85-1163, *supra*, at 3 ("Some of the additional costs connected with statehood will be met by granting the State a reasonable return from Federal exploitation of resources within the new State. * * * [T]he committee deems it only fair that when the State relieves the United States of most of its expense burden, the State should receive a realistic portion of the proceeds from resources within its borders.").

In addition, the Compact—which received the approval of the United States when it passed Congress and was signed by the President—required the acceptance of the people of Alaska, too. The Statehood Act by its terms provided that it would "cease to be effective" unless Alaskans approved each of the propositions set forth in Section 8(b), and it is clear from the legislative record of the deliberations on the Compact that Congress viewed the people's ratification "as a condition precedent to ultimate statehood." 104 Cong. Rec. 12453 (June 27, 1958) (Sen. Jackson). *See also id.* at 12458 (same) (Sen. Church). In particular, the third proposition that was put to Alaskans provided: "All provisions of the Act of Congress approved July 7, 1958, * * * prescribing the terms and conditions of the grants of lands *or other property* therein made to the State of Alaska, are consented to fully by said State and its people." Alaska Statehood Act, § 8(b), 72 Stat. at 344 (emphasis added). The underscored language in plain terms encompasses the Act's revenue grants—including the 90 percent provision embodied in Section 28(b) of the Compact.

Furthermore, Congress itself appreciated that the Alaska Statehood Compact—quite unlike routine legislation—was irrevocable. *See, e.g.*, 104 Cong. Rec. 12316-17 (June 26, 1958) ("[W]e are asked to make a grant which may not be revoked. We cannot, therefore, consider these bills as we would ordinary legislation in the sense that ordinary legislation may be amended or changed in subsequent years as experience dictates.") (Sen. Butler); *id.* at 12047 (June 24, 1958) ("Statehood once granted is irrevocable. The time to consider all aspects of the question is now, for once the statehood bill becomes law, it will be too late for this body to reconsider its action and to correct the situation by repealing its previously enacted bill, as it can do in most other cases.") (Sen. Thurmond); *id.* at 12015-16 (June 24, 1958) ("[W]e know when we vote [on the Statehood Act] * * * that we cannot later change it.") (Sen. Robertson); *id.* at 9501 (May 26, 1958) ("The importance of this issue lies in the fact that the decision will be final. The grant of statehood becomes an irrevocable act. We are playing for keeps, and if a mistake is made it can never be corrected.") (Rep. Fisher).[10]

Notwithstanding the foregoing, the United States contends that the contract paradigm for construing statehood compacts is categorically inapt, arguing that "Alaska's claim that statehood legislation must be interpreted under contract principles is contradicted by a long line of prece-

---

[10] Like any contract, a statehood compact may be modified with the State's consent. Alaska has accordingly acquiesced in previous amendments to the Alaska Statehood Compact. Alaska has long maintained, however, that the Compact may not be amended without its consent in a manner that impairs its substantive rights under the Compact. *See, e.g.*, Alaska Att'y General Op. No. J-66-556-81, p. 2 (Apr. 2, 1981) ("The state's position has always been that the United States cannot unilaterally amend the Statehood Act. However, the state has avoided a confrontation over the issue by working with Congress to ensure that any post-statehood amendments to the Statehood Act are beneficial to the state and not inimical to its interests.").

dent interpreting such legislation," and that "[t]he Supreme Court has always applied ordinary principles of statutory interpretation in construing statehood enabling acts." Br. for United States (Fed. Cir.), pp. 18-19 (citing, *e.g.*, *Lassen* v. *Arizona ex rel. Arizona Highway Dep't*, 385 U.S. 458, 461-470 (1967); *United States* v. *Wyoming*, 331 U.S. 440, 447-453 (1947); *United States* v. *Sweet*, 245 U.S. 563, 566-567, 572-573 (1918)). As the Court of Federal Claims noted, some lower courts apparently share this view, and have treated statehood compacts—including this one—merely as "routine legislation." App. 28a (citing *Alaska* v. *Andrus*, 429 F. Supp. 958 (D. Alaska 1977), *aff'd*, 591 F.2d 537 (9th Cir. 1979)).

Relying on *Coyle* v. *Smith*, 221 U.S. 559, 568, 574, 577-588 (1911), the United States also asserts that, in construing statehood compacts, this Court has eschewed application of the principles governing the enforceability and construction of interstate compacts. *See* Br. for United States (Fed. Cir.), pp. 21-22. According to the United States, the analogy between interstate compacts and statehood compacts is "unhelpful" because "[s]tatehood enabling legislation * * * is not the product of negotiation between two sovereigns," *id.* at 21, even though statehood compacts—like interstate compacts—require ratification before they may take effect.

The Court of Federal Claims below declined to decide with any "exactitude" (App. 34a) whether statehood compacts should be treated as a contract or ordinary legislation, while specifically noting the doctrinal confusion surrounding this issue in this Court's own case law. *See id.* 28a. The Federal Circuit simply passed on the issue altogether. This Court should grant certiorari to resolve the confusion and uncertainty on this fundamental question and make clear that, when ratified by the people, statehood compacts—like interstate compacts—establish binding and enforceable agreements that should be treated as "both a contract and a statute." *Oklahoma* v. *New*

Mexico, 501 U.S. at 235 n.5. It is important that the Court resolve this threshold issue because the manner in which statehood compacts are characterized affects not only the binding character of such acts but, as explained next, the manner in which they are interpreted by the courts.

3. In construing interstate compacts, this Court has recognized that it is appropriate to look to "extrinsic evidence" of the compact's history in order to interpret particular provisions of the agreement. *Id. See Texas* v. *New Mexico*, 482 U.S. at 128; *Texas* v. *New Mexico*, 462 U.S. 554, 568 n.14 (1983); *Arizona* v. *California*, 292 U.S. 341, 359-360 (1934). This comports with the basic principles of contract law recognized by this Court. *See, e.g., United States* v. *Winstar Corp.*, 116 S. Ct. 2432, 2472 (1996) ("[u]nder ordinary principles of contract law, one * * * construe[s] the contract in terms of the parties' intent, as revealed by language and circumstances") (Breyer, J., concurring) (quoting, *inter alia, Restatement (Second) of Contracts* § 202(1) (1979) (" 'Words and other conduct are interpreted in the light of all the circumstances, and if the principal purpose of the parties is ascertainable it is given great weight' ")). Moreover, as the Court of Federal Claims recognized below, this Court in *Egan*, 369 U.S. at 65, said that statehood compacts—specifically this one—"must be construed in light of the circumstances of [their] formulation and enactment." App. 37a n.35. *See United States* v. *Wyoming*, 331 U.S. at 453 (considering circumstances surrounding passage of statehood compact).[11]

---

[11] *See also Neil, Moore & Co.* v. *Ohio*, 44 U.S. (3 How.) 720, 741-742 (1845) (statehood compact must be construed in light of "expectations of [the] parties"); *Searight* v. *Stokes*, 44 U.S. (3 How.) 151, 167 (1845) (in construing compact between United States and

The applicability of this principle is especially important in this case in view of the extrinsic evidence of the parties' intent and understanding in entering into the Compact, including Secretary Seaton's representations to Alaskans on the eve of the statehood referendum as to the meaning of the Compact. As discussed, Secretary Seaton—"a major proponent of statehood"—traveled to Alaska and "barnstormed" the Territory in a no-holds-barred effort to secure ratification of the Compact. App. 21a. In doing so, he told Alaskans that he was there "to make clear the effect of the Enabling Act." *Id.* 88a. And he sought to alleviate Alaskans' concerns as to the financial viability of the new State by touting the unprecedented revenue grants embodied in the Compact—including the 90 percent provision. Thus, for example, he reassured Alaskans that "the [Statehood] Act reaffirms Alaska's *preferential treatment* in receiving 90 percent of all revenues from oil, gas, and coal leasing on the public domain." *Id.* 94a (emphasis added). *See supra* at 7-8.[12]

Pennsylvania, court must, *inter alia*, take into account "the objects [the parties] evidently had in view").

In construing legislative acts that require ratification by popular referendum, courts similarly consider the understanding of the people in ratifying such provisions. *See, e.g., State* v. *Lewis*, 559 P.2d 630, 637-638 (Alaska) ("In construing a legislative act, we need only look to the intent of the members who enacted it. A [state] constitutional provision, however, must be ratified by the voters, and it is therefore also necessary to look to the meaning that the voters would have placed on its provisions."), *cert. denied*, 432 U.S. 901 (1977); *State* v. *Gallant*, 764 P.2d 920, 922 (Or. 1988) (in construing referendum provision, court should consider intent of the electorate).

[12] The Department of the Interior adhered to that stance long after Secretary Seaton secured passage of the Compact. *See, e.g.*, U.S. Department of the Interior, Minerals Management Serv. ("MMS"), Alaska OCS Region, *Alaska Nets $5.1 Million as State's Share of Federal Mineral Revenues in 1994*, News Release, Jan. 26, 1995 (" 'A state is entitled to a share of the mineral revenues collected from federal lands located within that state's boundaries. As prescribed *by the Alaska Statehood Compact*, Alaska gets a

These contemporaneous statements as to the meaning and effect of the Compact—coming from the head of the federal agency that, in Secretary Seaton's words, "successfully pilot[ed] the Alaska statehood bill through the Congress," App. 88a, and had long been charged with the responsibility of overseeing Territorial Government in Alaska—surely carried weight with Alaskans in deciding whether to ratify the Statehood Compact. They ordinarily would be given great weight in discerning the interpretation or understanding of the federal government as to the meaning of pertinent statutory provisions. *Cf. United States* v. *Wyoming*, 331 U.S. at 446 (Secretary of the Interior's interpretation of statehood act was "significant" consideration in construing meaning of provision); *Aluminum Co. of Am.* v. *Central Lincoln Peoples' Util. Dist.*, 467 U.S. 380, 390 (1984) (agency interpretation entitled to great weight when agency was "intimately involved in the drafting and consideration of the [pertinent] statute"). And, under basic contract principles, they are highly probative of the parties' intent in entering into the Compact. *See, e.g., Oklahoma* v. *New Mexico*, 501 U.S. at

---

90-percent share. The U.S. Treasury gets the remaining 10 percent.") (quoting Acting MMS Director) (emphasis added) (Fed. Cir. App. A1756); U.S. Department of the Interior, *Kaktovik Subsurface Valuation Report* (1983) ("Alaska, *under the Statehood Act* is entitled to 90 percent of the reserves if minerals are leased under the [MLA].") (emphasis added) (Fed. Cir. App. A777).

Until the decision below, the courts, too, had shared this view. *See, e.g., Rowe* v. *United States*, 464 F. Supp. 1060, 1063-64 (D. Alaska 1979) ("*in the Statehood Act* * * * the State of Alaska was granted 90 percent of the revenues received by the United States from coal and mineral leases situated on Alaskan lands retained by the federal government") (emphasis added) (citing Section 28 of Alaska Statehood Compact), *aff'd in part and rev'd in part on other grounds*, 633 F.2d 799 (9th Cir. 1980), *cert. denied*, 451 U.S. 970 (1981); *United States* v. *Atlantic Richfield Co.*, 435 F. Supp. 1009, 1016 (D. Alaska 1977) ("*The Statehood Act* further provided that the State of Alaska would receive 90% of the revenues" from mineral leasing on federal lands) (emphasis added), *aff'd*, 612 F.2d 1132 (9th Cir.), *cert. denied*, 449 U.S. 888 (1980).

230 (looking to "contemporaneous memoranda and statements of the Compact Commissioners and their staffs" in construing interstate compact); authorities cited *supra* at 19.[13]

Because it argues that the Alaska Statehood Compact is ordinary legislation, the United States argues that Secretary Seaton's statements and the other extrinsic evidence relied upon by Alaska "are not entitled to any interpretative weight in construing Section 28(b)," and that, instead, the inquiry as to the meaning and effect of the Statehood Compact must be limited to congressional intent, just as it would be in any run-of-the-mine statutory interpretation case. App. 30a. *See* Br. for United States (Fed. Cir.), pp. 18-19 (citing, *e.g.*, *Lassen* v. *Arizona ex rel. Arizona Highway Dep't*, 385 U.S. at 461-470; *United States* v. *Sweet*, 245 U.S. at 566-567, 572-573). The United States claims that *Egan* supports that approach, because, it asserts, in that case the Court "looked exclusively to congressional intent * * *, with no suggestion that the understanding of Alaskans was relevant." Br., p. 19. Under the United States' reading of this Court's cases, in other words, the intent and understanding of the people of Alaska in agreeing to the Compact is irrelevant in interpreting that Compact.

The Court of Federal Claims below purported to consider Secretary Seaton's statements, but swiftly dismissed them as "salesmenship," "not meant as literal promises or statutory construction." App. 36a. These statements, however, were not themselves offered by Alaska in this

---

[13] While Alaska believes that—especially when viewed with the legislative record of the Statehood Compact—the extrinsic evidence of the parties' intent in entering into the Compact compels the conclusion that the United States has breached its obligations under the Compact, this evidence is, at a minimum, sufficient to defeat the United States' motion for summary judgment, and to warrant further factual development as to the parties' intent in entering into the Compact. *See* Reply Br. for Alaska, pp. 9-10 (Fed. Cir.); note 14, *infra*.

litigation as "promises," but rather as extrinsic evidence of the parties' intent in consummating the Compact and their understanding as to the meaning of the pertinent terms of the Compact. Of all the events surrounding statehood arguably the most important is the people's own decision to join the Union on the agreed upon terms. It is therefore incumbent upon courts construing statehood compacts to weigh carefully the people's intent and understanding in entering into such compacts, just as courts ordinarily do in the case of contracts, and as this Court has done in the parallel case of interstate compacts. The Court of Federal Claims below dismissed such extrinsic evidence and, instead, focused almost exclusively on *Congress'* intent in enacting the Statehood Act. It takes two parties to make a compact, however, and the intent of the people of Alaska in agreeing to statehood is entitled to equal consideration in construing the terms of the Statehood Compact.

If, in making the indelible decision to embrace statehood, the people are not entitled to rely on the representations of cabinet-level officials making the case for statehood directly to them and explaining the terms and conditions of admission contained in the Compact, the people should be forewarned by this Court. This Court accordingly should grant certiorari to clarify the weight that should be given to such extrinsic evidence of the parties' intent in construing statehood compacts.[14]

---

[14] On September 29, 1997, this Court agreed to entertain the parties' exceptions to the special master's report in *New Jersey* v. *New York*, No. 120, an original jurisdiction case involving a dispute between New Jersey and New York over the meaning of an 1834 compact entered into between those two States relating to Ellis Island. 66 U.S.L.W. 3202. In interpreting that compact, the special master gave extensive consideration to extrinsic evidence of the parties' intent in entering into the agreement. *See* 1997 WL 291594, at *15-*16, *23-*24, *34-*45 (Mar. 31, 1997) (special master report). Indeed, the master denied the parties' cross-motions for summary judgment in order to allow for "an evidentiary proceeding [that] would introduce extrinsic evidence of Compact history and

4. Construing the Alaska Statehood Compact as both a contract and a statute, it is clear that the United States has breached the promise embodied in Section 28(b) of the Compact to give the new State 90 percent of all federal mineral leasing revenues generated in Alaska. Indeed, even the Court of Federal Claims below concluded that Section 28(b) "undisputably * * * gave Alaska * * * 90 percent of gross revenues from [federal] mineral lands," App. 39a, and "clearly was part of a group of provisions that, together, ensured the financial viability of Alaska." *Id.* 33a. Statehood proponents would have been shocked if on the heels of Alaska's ratification of the Compact and acceptance of statehood Congress suddenly repealed the 90 percent provision; that this case arises due to the unilateral actions of the United States some 35 years thereafter may have muted the outcry from certain quarters but in no way alters the legal analysis of the promises consecrated in the Compact.

Yet, while it "assume[d] * * * that Section 28(b) is a contractually enforceable provision of the Statehood Act," App. 34a, the Court of Federal Claims ultimately concluded that the 90 percent provision was freely alterable by the United States on the ground that, in enacting the statehood legislation, Congress could not have intended to put Alaska on a different footing than any of the existing States insofar as MLA revenues were concerned. *See id.* 38a-40a. This conclusion reflects the court's refusal to construe the Statehood Compact as a contract and to weigh the extrinsic evidence of the parties' intent. For

---

subsequent Compact operations that would help clarify its terms." *Id.* *12. Because this Court's decision in *New York* v. *New Jersey*, No. 120, may well address the appropriate weight to be given extrinsic evidence in construing compacts, the Court should, at a minimum, hold this case pending the disposition in *New York*, and, if appropriate, grant the writ in this case, vacate the judgment below, and remand for reconsideration in light of this Court's decision.

it is clear that from the outset of the lengthy deliberations on Alaska statehood the Alaska situation was viewed as unique, that Alaska statehood would not be feasible without guaranteeing the State an unprecedented package of land and revenue grants, and that when the United States sold the Compact to the people of Alaska it assured them that the land and revenue grants contained in the Compact—including the 90 percent provision embodied in Section 28(b)—would be adequate to meet the State's needs. The people accepted statehood based on this understanding. *See supra* at 2-8.

No other State was promised a 90 percent share of all federal mineral leasing revenues generated within its borders as a condition precedent of its admission to the Union, and no other State was entitled under the MLA (or otherwise) to a 90 percent direct share of such revenues in any event. Thus, as Secretary Seaton put it at the time of the statehood referendum, Alaska was accorded "*preferential treatment* in receiving 90% of all [federal mineral leasing] revenues." App. 94a (emphasis added). When the people of Alaska accepted statehood on these terms, the promise to confer such revenues became binding upon the United States and unalterable without the consent of Alaska, just as the promise by Alaska to assume the burdens and obligations of statehood became binding upon it and unalterable without the consent of the United States. *See Cooper* v. *Roberts*, 59 U.S. (18 How.) at 178; authorities discussed *supra* at 14-15.

Contrary to the suggestion of the Court of Federal Claims (*see* App. 39a-40a), nothing prevented the United States and Alaska from agreeing to Alaska's admission on these terms. As one commentator observed in a day when the admission of new States was more common:

> [T]he Constitution * * * provides that "New States may be admitted by the Congress into the Union." The equality [among States] is an incident of the

> admission; which imports of itself that the State, after it has become a member of the Union, is to enjoy all the rights and privileges of such membership. But this in no way affects the conditions on which Congress may see fit to grant the admission. It is not necessary that those conditions should be such, and such only, as have been made with every other State that has been admitted under the power given in Section 3 of Article IV. Equality of membership in the Union means that every State shall enjoy the same rights and privileges as every other State. One of the rights of every member of the Union is the right to make covenants and agreements with the United States in any form in which the parties can unite. [George Ticknor Curtis, *Admission of Utah: Limitation of State Sovereignty by Compact with the United States* 7 (1887).[15]]

Due to the exigent circumstances complicating Alaska's admission to the Union, Alaska presents a particularly striking illustration of this principle. To meet Alaska's unique revenue needs—and thus secure both passage and ratification of the Statehood Compact—Congress and the new State not only agreed to an unprecedented land grant but also to a number of revenue grants not enjoyed by the existing States, including a 90 percent direct share of all revenues derived from federal mineral leases in Alaska. *See supra* at 2-8. That other States—with greater and more conventional financial means to govern themselves—were not accorded the same benefits under the statehood compacts pursuant to which they were admitted to the Union in no way alters the binding and enforceable nature of the provisions contained in the

---

[15] The "equal footing" doctrine does not preclude such an agreement. That doctrine provides only that the United States holds the lands under navigable waters in the Territories in trust for the future States, and that a State acquires title to such lands upon entering the Union on an 'equal footing' with the original 13 States. *See Idaho* v. *Coeur d'Alene Tribe of Idaho*, 117 S. Ct. 2028, 2041 (1997); *United States* v. *Alaska*, 117 S. Ct. 1888, 1892 (1997).

Alaska Statehood Compact, which were plainly designed to address Alaska's peculiar circumstances.[16]

5. The need for plenary review by this Court is heightened by the short shrift given to the important questions presented by the Federal Circuit below, which, after briefing and argument, simply summarily affirmed the Court of Federal Claims decision in a one-paragraph *per curiam* decision. *See* App. 1a. The need for this Court's review is also increased by the fact that the Federal Circuit has exclusive jurisdiction over suits, such as this, involving claims against the United States for breach of an express or implied contract, including the statehood compact here. *See* 28 U.S.C. § 1491(a)(1). As a leading commentator has explained: "The issues arising in [Federal Circuit] litigation, involving many of the legal obligations of the United States, can have a unique importance that warrants review by the Supreme Court." Robert L. Stern, Eugene Gressman, Stephen M. Shapiro & Kenneth S. Geller, *Supreme Court Practice* 201-202 (7th ed. 1993). That is surely true here.

In the absence of this Court's review, the one-paragraph *per curiam* decision of the Federal Circuit below will effec-

---

[16] In concluding that the promise embodied in Section 28(b) was not binding on the United States, the Court of Federal Claims relied on a statement in a legislative record of the Compact that "'[t]he bill does not grant any advantage over existing States.'" *See* App. 40a (quoting S. Rep. 85-1163, *supra*, at 4). That statement—which was not addressed to Section 28(b) or the 90 percent provision—is not inconsistent with Congress' unmistakable effort to put Alaska on a *level* playing field with the existing States by ensuring that Alaska would have the financial wherewithal to govern itself. More fundamentally, the Court of Federal Claims' almost singular reliance on this statement further reflects its refusal to consider the extrinsic evidence of the parties' intent—as a court ordinarily would do in construing a contract—which confirms that Alaska accepted statehood based on the United States' word that the new State would receive the specific land and revenue grants embodied in the Compact.

tively decide once and for all whether the Alaska Statehood Compact is a binding and enforceable agreement, imposing obligations on both the United States and Alaska that may not be altered without the consent of the other; or whether it is more akin to ordinary legislation, freely alterable by Congress regardless of the understanding and intent of the people of Alaska when they made the momentous decision to accept the federal government's offer of statehood. In this case, permitting the Federal Circuit judgment to stand will free the United States to restrict the manner in which federal mineral leasing revenues are allocated to Alaska from gross to net. Logically extended, however, the court's ruling invites the federal government to eliminate this critical revenue source altogether, in plain derogation of the Compact and the parties' intent in entering into it.

Whatever the adverse consequences of the Federal Circuit ruling to Alaska, however, every State that has joined the Union, as well as the people and territories who may be contemplating doing so, share a compelling interest in this Court's resolution of the fundamental questions presented. The United States—whose defiant position on the construction and enforceability of statehood compacts was largely embraced by the Federal Circuit below—is by necessity a party to every statehood compact, not simply Alaska's. The general significance of this case accordingly extends far beyond Alaska and the Compact admitting the Nation's 49th State.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN G. ROBERTS, JR.
GREGORY G. GARRE
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5810

CHARLES E. COLE
406 Cushman Street
Fairbanks, Alaska 99701
(907) 452-1124

* Counsel of Record

BRUCE M. BOTELHO *
Attorney General
ELIZABETH J. BARRY
JOANNE M. GRACE
Assistant Attorneys General
STATE OF ALASKA
Department of Law
P.O. Box 110300
Juneau, Alaska 99811
(907) 465-3600

Counsel for Petitioner

APPENDICES

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

96-5124

STATE OF ALASKA,
Plaintiff-Appellant,
v.

THE UNITED STATES,
Defendant-Appellees.

Decided: July 8, 1997

Before MICHEL, LOURIE, and RADER, *Circuit Judges.*

PER CURIAM.

The order of the United States Court of Federal Claims granting summary judgment to the United States, *State of Alaska v. United States,* 35 Fed. Cl. 685 (1996), is *affirmed* on the basis of the reasoning set forth in the lengthy, detailed, precise and correct opinion of Judge Bruggink. Judge Bruggink's scholarly opinion is thoroughly supported with cited and quoted authority and record evidence. Nothing more need be said.

APPENDIX B

UNITED STATES COURT OF FEDERAL CLAIMS

No. 93-454L

STATE OF ALASKA,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

May 31, 1996

OPINION

BRUGGINK, Judge.

The State of Alaska alleges that the United States is liable for breach of contract damages for not living up to certain terms of the Alaska Statehood Act, or in the alternative, that it has taken the State's property without just compensation in violation of the Fifth Amendment to the United States Constitution. Pending is Alaska's motion for partial summary judgment and defendant's cross-motion for summary judgment. The State's motion only addresses count V of its complaint. Alaska asks the court to determine if the Alaska Statehood Act ("Statehood Act") is a binding and enforceable contract between it and the United States, and whether or not the United States has breached its obligation under section 28(b) of the Statehood Act. Specifically, the State alleges that section 28(b) granted to Alaska the right in perpetuity to receive

90 percent of the gross proceeds derived from mineral leases on federal lands in Alaska under the Mineral Leasing Act of 1920. 30 U.S.C. §§ 181-287 (1994). Defendant's motion is comprehensive. It asserts that counts I through IV of the complaint are time barred under 28 U.S.C. § 2501 (1994), and, even if those four counts are timely, the entire complaint, including count V, is wholly without merit.[1] The matter has been extensively briefed. Oral argument was held in Anchorage, Alaska on April 30, 1996. For the reasons set forth below, plaintiff's motion is denied and defendant's motion is granted.

BACKGROUND

The Struggle for Statehood

In 1867, in one of this nation's most far-sighted expenditures, Secretary of State William H. Seward purchased the entire territory of present-day Alaska from Russia for $7,200,000. In Aleut, Alaska means "The Great Land." It is aptly named. Alaska is unique in its size grandeur, natural resources, strategic location, spectacular scenery and wildlife. This vast land was organized into the Territory of Alaska in 1912. Beginning in 1916, efforts were made in Congress to admit Alaska as a State. 104 CONG.

---

[1] Count I of the complaint alleges that the United States has breached the Statehood Act by its pattern of withdrawing federally owned lands in Alaska from mineral leasing and by its diminution of Alaska's 90 percent share of mineral leasing revenues. Count II asserts that the people of Alaska relied on Congress' promise to develop federal mineral lands in Alaska and the Government's failure to do so amounts to a breach of contract. Count III alleges that Congress has breached the implied covenant of good faith and fair dealing by withdrawing federal lands from mineral leasing. Count IV alleges that Congress' withdrawal of lands from mineral leasing amounts to a taking of Alaska's interest in mineral leasing revenues to be derived from those lands. Count V charges that the United States has violated section 28(b) of the Statehood Act by deducting administrative costs prior to the disbursement of 90 percent of mineral leasing revenues to the State.

REC. 9339 (1958) (First introduced by Delegate Wickersham). Alaska statehood was not taken seriously, however, until after World War Two, when an Alaska Statehood Bill was introduced in every Congress between 1946 and 1958. Finally, after much debate, the Territory of Alaska was admitted as the forty-ninth State of the Union on January 3, 1959.

Alaska's admission into the Union did not come easily. For reasons that will become apparent in the discussion below, the State urges the view that the primary reason for delay was concern over the financial wherewithal of a State of Alaska. The Federal Government contends that the State has exaggerated the significance of that concern. A review of the legislative history suggests that, while financial support for the State was a major concern for the proponents of statehood, that concern was the most readily addressed by legislation as the statehood "package" evolved over forty years. The real opposition to statehood was based on other factors that were more difficult to resolve.

Alaska is enormous. It is more than twice the size of the next largest State, Texas. Immediately prior to statehood, however, virtually all of its 365 million acres were owned by the Federal Government. Because those lands could not be taxed, there was concern that it would be difficult for Alaska as a State to raise sufficient revenue to carry out the responsibilities of statehood. This fear was expressed by the Library of Congress' Legislative Reference Service in a report on possible statehood for Alaska and Hawaii:

> No doubt exists as to the ability of Hawaii to bear the cost of statehood, although this question has been raised with regard to Alaska. The potential revenue problem in Alaska is made more acute by the existence of federal land holdings totaling more than 98 percent of its area. Suggestions have been made that this situation must be resolved before Alaska is

> granted statehood . . . The undeveloped state of Alaska's resources and its meager population have caused opponents of statehood to charge that the Territory would not be able to bear the costs of statehood.

Library of Congress, *Public Affairs Abstracts*, "Statehood for Alaska and Hawaii" Vol. 1, No. 20 (Dec. 1950) at 2.[2] Many Alaskans shared Congress' concern that Alaska's economy might be unable to support the heavy financial burden of statehood.[3]

---

[2] In addition, in 1947, the House Subcommittee on Territorial and Insular Possessions reported:

> Opponents argue that . . . the expense of statehood is too great for Alaska to bear, since the sources of revenue for Alaska as a State are so uncertain; that Federal reservations would deprive the State of revenue from, and jurisdiction over, vast areas. . . .

STAFF OF HOUSE SUBCOMM. ON TERRITORIAL AND INSULAR POSSESSIONS OF PUBLIC LANDS COMM., 80TH CONG., 1ST SESS., REPORT ON H.R. 206, A BILL TO PROVIDE FOR THE ADMISSION OF ALASKA, THE FORTY-NINTH STATE 8 (Comm.Print 1947); *see also* S.REP. NO. 1163, 85th Cong., 1st Sess. 11 (1958) (summarizing the financial arguments against statehood: "The economic conditions in Alaska are unstable . . . the resources of the Territory are not sufficiently developed to allow private enterprise to take up the slack in employment and provide necessary revenues should Federal spending be abruptly curtailed."); 104 CONG.REC. 12,314 (1958) (Senator Monroney stating. "I am deeply concerned about the very thin economy of Alaska. . . . Unless a more solid economic foundation is built under it, Alaska will not be able to carry on successfully its duties and obligations and to assume the full responsibilities of a State."); 104 CONG.REC. 12,442 (1958) (Senator Johnston stating, "I do not believe the people of Alaska are able to sustain the financial burden involved.").

[3] The Congressional Record reprinted numerous letters to Congress from citizens of Alaska who were opposed to statehood, as well as several anti-statehood editorials from Alaskan newspapers. *See, e.g.*, 104 CONG.REC. 12,149 (1958) ("Most of the people of southwestern Alaska do not favor statehood at this time. . . . The increased costs of statehood would make further [industrial] devel-

Defendant contends, however, that Alaska was in an enviable financial position on the eve of statehood. It cites an Interior Department report, reprinted in the Congressional Record, that states, "Alaska had the only government in the 48 States, Hawaii, Puerto Rico, and Alaska, which had no outstanding debt at the close of fiscal year 1957." 104 CONG. REC. 12,332 (1958). The Alaska Statehood Committee concluded that "Alaska cannot afford *not* to become a state." U.S.App. at 126,[4] ALASKA STATEHOOD COMMITTEE, AN ANALYSIS OF THE COST OF STATEHOOD TO ALASKA 13 (Feb. 1, 1957) (emphasis in original). The August 1957 Senate Report on Alaskan Statehood stated:

> Alaska has had a net surplus in its budget for the last few years, and has provided the basic services of State government except those precluded by the organic act. The services were provided and paid for without incurring any bonded indebtedness. There is no sales tax in Alaska and no property tax at the present time except in cities and incorporated districts; but based upon the amount collected in 1956, the yield for the next biennium will be about $41 million without imposing any additional taxes.

S.REP. No. 1163, 85th Cong., 1st Sess. 13 (1957).

---

opment impossible."); *id.* at 12,315 ("The majority of us bona fide Alaskans . . . have always felt the Representatives and Senators in Washington, D.C., knew that Alaska cannot support statehood, at this time. . . ."); *id.* at 12,316 ("Statehood now for Alaska will bankrupt us and set our industrial growth back a generation."); *id.* at 12,340 ("Alaska needs a 10-year moratorium on the statehood issue. . . . During this moratorium we can put our house in order to develop industry so that we can afford statehood at the end of 10 years."); *id.* at 12,341 ("To finance the added costs of statehood we would have to increase our present punitive taxes to a prohibitive one.").

[4] "U.S.App." refers to the Appendix filed May 15, 1995, by the United States along with its Motion for Summary Judgment.

Senator Jackson of Washington, one of the main proponents of statehood in the Senate, also did not view financial stability as a major concern. Instead, he stated:

> Alaska is a going concern. As a matter of fact, Alaska is currently financing, by means of its own revenues, all functions and services it is permitted to carry on. The Territorial government has no debt, and actually has a cash surplus. The additional activities Alaska would engage in after statehood is granted can normally be expected to be financed through the additional revenues which would also become available to Alaska as a State.

104 CONG.REC. 12,012 (1958).

While lack of financial wherewithal was of great concern to proponents of statehood, that was only one of many concerns of statehood opponents, and arguably it was not the most important. One of the leading opponents, Representative Aspinall of Colorado, classified the arguments against statehood into three categories: geography, population and political immaturity. 104 CONG. REC. 9490 (1958). *See also* 104 CONG.REC. 9494 (1958). The geographic objection was that the Alaskan territory was separated from the contiguous 48 States by another country, namely Canada. *See, e.g.*, 104 CONG. REC. 9358 (1958) (Senator Rogers stating that noncontiguity is "probably the most important factor."); 98 CONG.REC. 1500 (1952) (same by Senator McFarland). Opponents felt the State would be too far removed from the mainland United States to have the same interests. 104 CONG.REC. 12,024 (1958).

Lack of population was also continuously stressed during the debates as a reason to deny statehood to Alaska. In 1940, there were only 72,524 people in the entire territory. STAFF OF SUBCOMM. ON TERRITORIAL AND INSULAR POSSESSIONS OF PUBLIC LANDS COMM. 80TH CONG., 1ST SESS. REPORT ON H.R. 206, A BILL TO PROVIDE FOR THE

ADMISSION OF ALASKA THE FORTY-NINTH STATE 1 (Comm.Print 1947). By 1958, the population had grown to around 212,500 people, 50,000 of whom were military personnel. 104 CONG.REC. 12,207 (1958). Even in 1958, however, the most persistent complaint that appears in the Congressional Record is that there were still not enough people to form a State, particularly in an area as large as Alaska. As Representative Davis of Georgia stated in 1958, "My own home county, . . ., in the State of Georgia has more people in it than the entire Territory of Alaska." 104 CONG.REC. 9494 (1958); *see also* 98 CONG.REC. 1516, 1530-31 (1952); 104 CONG.REC. 12,022 (1958) (Senator Robertson); *id.* at 12,048 (Senator Thurmond stating, "[T]he population per square mile is very much smaller than that in even our most sparsely settled States.").

Although the argument was often made that there was not sufficient population to build an economy, it is clear that the real concerns were less altruistic. Apparently many Senators and Representatives questioned the wisdom of Roger Sherman's Connecticut Compromise, incorporated in the United States Constitution for bridging the competing interests of large and small states. The debate is replete with transparent jealousy over the fact that so few people in Alaska would be able to elect two senators. *See* 104 CONG.REC. 9221 (1958) ("[D]eep down in our minds it is the prevailing objection, perhaps the most important to many Members. Very simply put, it is this: Should 212,000 people have two representatives in the United States Senate when a State such as New York, with 16 million people, has the same number."); 104 CONG.REC. 9224 (1958); 98 CONG.REC. 1525 (1952); 98 CONG.REC. 1528 (1952).

Concern over Alaska's asserted lack of political maturity was based, in part, on the view that Alaska had been too dependent on the Federal Government and had not

developed its own political identity. *See* 104 CONG.REC. 9491 (1958).

There were a number of other arguments that recur in the debates. For example, several Senators and Representatives repeatedly expressed concern that giving statehood to Alaska and Hawaii, would cause other commonwealths, territories or possessions to appy for statehood, e.g., Puerto Rico, American Samoa, the Virgin Islands, and Guam. *See* 98 CONG.REC. 1500 (1952); *id.* at 1521; *id.* 1531-32; 104 CONG.REC. 9229 (1958); 104 CONG. REC. 9357 (1958).

Other objections were that transferring to state control land so close to the Soviet Union was a security risk. There were also sectional concerns as to how senators from Alaska and Hawaii would vote on the key issues of the day, i.e., civil rights. In addition, there were allegations of a communist menace in the labor unions in the two territories.

From the vantage point of 1996 it is easy to discount these objections. In retrospect many seem, at best, wrongheaded, trivial, or based on self-interest. Nevertheless, the court has carefully read the entire legislative history and it is impossible to come away from that project with a sense that the provision for finances was in the end, the key to achieving statehood for Alaska. Of all the problems identified, real or imaginary, financial stability was the most susceptible to a legislative fix. The population issue was somewhat defused as the Territory grew in population. The other problems, however, were more political in nature and hence less tractable.

In the years between 1916 and 1958, the statehood "package" became more generous to Alaska. Although there were several devices adopted in the final act to augment the financial well being of the new State, the most dramatic evidence of the increasing breadth of the statehood package was the incremental increases of proposed

federal land grants to the State. It is clear from the entire record that the land grant was seen as the main vehicle for making Alaska free from dependence on the central government.[5]

The first land grant proposals were modeled after legislation granting statehood to other territories. The 1948 statehood legislation proposed that Alaska would get certain limited direct grants, and four sections per township for school use, the same as offered to other western States upon their admission. H.R.REP. No. 1731, 80th Cong., 2d Sess. 13, 15 (1948). One problem with this approach was that the State could only select lands after survey. Virtually none of Alaska had been surveyed, however, and it was anticipated that the process would literally take hundreds of years. By 1950, the proposal was to allow Alaska to choose 21 million acres, without a survey, over a period of twenty five years. S.REP. No. 1929, 81st Cong., 2d Sess. 11 (1950). By 1953, the amount had been raised to 100 million acres. H.R.REP. No. 675, 83d Cong., 1st Sess. 9 (1954). In 1954, the amount was 103,350,000 acres. S.REP. No. 1028, 83d Cong., 2d Sess. 3 (1954). In 1957, the amount was increased to

---

[5] The reasoning for this is made clear by the Senate report accompanying the Statehood Bill. The report stated that,

> [t]he expenses of the State of Alaska will be comparatively high, partially due to the vast land areas within the State; but the State would be able to realize revenues from only 2 percent of this vast area unless some provisions were made to modify the present land ownership conditions.

S.REP. NO. 1163, PROVIDING FOR THE ADMISSION OF THE STATE OF ALASKA INTO THE UNION. 85th Cong., 1st Sess. 2 (1957). The Statehood Bill would "provide out of the vast Federal domain in Alaska sufficient lands and resources to permit the new State to earn its continuing economic independence and growth." S.REP. No. 1163, 85th Cong., 1st Sess. 1 (1957); *see also* S.REP. No. 1929, 81st Cong., 2d Sess. 11 (1950) (It was hoped that "such a grant, with its power of selection, [would] be of great benefit to the State in meeting the financial obligations of statehood.").

182,800,000 acres. H.R.REP. No. 624, 85th Cong., 1st Sess. 2 (1957), U.S.Code Cong. & Admin.News 1958, pp. 2933, 2934. The same amount was proposed during 1958, but concerns by some opposed to statehood that such a large land grant constituted an unprecedented "giveaway" led one of the sponsors of the legislation, Representative O'Brien of New York, to propose a reduction in the grant to the State to 103,350,000 million acres.[6] *See* 104 CONG.REC. 9219 (1958).

Even with the power to choose such an unprecedented[7] amount of land, and the fact that the conveyances included the mineral as well as surface estates, it was feared that the land grants would not be effective. Under each of the proposals to give land to Alaska, the State would be limited in its selection to lands that had not been specifically withdrawn from public use by the Federal Government. This was a significant limitation as the Federal Government had already withdrawn huge areas of land. As of 1954, 95 million acres were enclosed within various types of Federal withdrawals and reservations. S.REP. No. 1028, 83d Cong., 2d Sess. 3 (1954). Statehood proponents were concerned that many of these withdrawals potentially involved the most productive land in the Territory. S.REP. No. 1028, 83d Cong., 2d Sess. 3 (1954); S.REP. No. 1929, 81st Cong., 2d Sess. 35 (1950).

The largest single withdrawal occurred in 1943, when the Department of the Interior withdrew from mineral leasing 67,440,000 acres of land in three separate areas of Alaska. Public Land Order ("PLO") 82, 8 Fed. Reg.

---

[6] The proposed 103,350,000 acres included a direct grant of 102,550,000 acres of unreserved federal lands to be selected over a period of 35 years, 400,000 acres of land located within national forests for community development and expansion purposes selected over 35 years, and an additional 400,000 acres, also chosen over 35 years, to be used for community and recreation areas. 48 U.S.C. *note prec.* § 21 (1994).

[7] S.REP. No. 1163, 85th Cong., 1st Sess. 2 (1957).

1599 (1942). These areas include all of the North Slope of Alaska, large areas of the Alaska Peninsula and the Katalla-Yakataga area on the Gulf of Alaska. *Id.* The land was withdrawn "for use in connection with the prosecution of [World War Two]." *Id.* In 1946, approximately 18,640,000 acres of the land withdrawn in PLO 82 was released for leasing. Public Land Order 323, 11 Fed. Reg. 9141-42 (1946). The remaining 48,800,000 acres continued to be withdrawn, however. *Id.* In 1957, prior to the passage of the Statehood Act, Secretary Seaton opened twenty million acres of that withdrawal to leasing. Alaska Supp.App. 1,[8] Dept. of Interior Press Release (Nov. 20, 1957). Twenty-three million acres remained withdrawn as Naval Petroleum Reserve No. 4. *Id.* The remaining 5 million acres were reserved, along with an additional 4 million acres, to form the Arctic National Wildlife Range ("ANWR"), the nation's largest wildlife refuge.[9] *Id.* at 2. According to Secretary Seaton's Land Order, however, ANWR would be open to mineral leasing and mining. *Id.* at 4. These withdrawals were again modified on April 18, 1958, to allow certain other areas to be opened to mineral leasing. Public Land Order 1621, 23 Fed.Reg. 2637-38 (1985). Other withdrawals continued, however. The Department of the Interior periodically withdrew portions of Alaska from mineral leasing including parts of the Kenai Moose Range in August 1958. *Duesing v. Udall,* 350 F.2d 748, 750 (D.C.Cir.1965), *cert. denied,* 383 U.S. 912, 86 S.Ct. 888, 15 L.Ed.2d 667 (1966).

Because of these and other withdrawals, several Senators felt that the land grant would be of little assistance to the fledgling State. Senator Butler of Maryland stated:

---

[8] "Alaska Supp.App." refers to the two volumes of Plaintiff State of Alaska's Supplemental Appendices filed July 24, 1995.

[9] The remaining land, approximately 800,000 acres, would serve as a buffer zone around Naval Petroleum Reserve No. 4. Alaska Supp.App. 1 at 2, Dept. of Interior Press Release (Nov. 20, 1957) at 2.

> Much of the best land and most valuable resources of the Territory have been reserved or withdrawn from use by private industries or corporations.
>
> . . . .
>
> There are so many land reserves and withdrawals that there has never been any complete, accurate tabulation of them all. One tabulation, which may be reasonably complete, shows a total of 98,500,000 acres in withdrawals out of the 365,481,600 acres in Alaska (p. 421, Senate hearings). This area is about the size of the State of California and represents about 27 percent of Alaska's total area. *More important, it comprises almost all of the best and most valuable resources known to exist in the Territory.*

S.REP. No. 1929, 81st Cong., 2d Sess. 34-35 (1950) (emphasis in original); *see* H.R.REP. No. 624, 85th Cong., 1st Sess. 7-8 (1957), U.S.Code Cong. & Admin. News 1958, p. 2939 (stating, "[T]remendous acreages of land in Alaska have been tied up in the status of Federal reservations and withdrawals for various purposes. . . . [T]his practice has been carried to extreme lengths in Alaska, to a point which has hampered the development of such resources for the benefit of mankind. . . . The committee feels that this policy must be changed if Statehood for Alaska is to be a success.").

Concern about the extent of federal withdrawals not only prompted increases in the proposed land grant to the State, but also led to other attempts to bolster the new State's revenue sources. For example, Alaska would be entitled to receive five percent of the net proceeds of the sale of federal lands. In addition, one of the income sources viewed then as most useful would be proceeds from the Pribilof Island seal fisheries. There would also be revenues from fish and wildlife licenses, as well as 25 percent of receipts from national forests. 104 CONG.REC. 9511 (1958).

The most critical provision to the present lawsuit, however, was added to the statehood package in 1957. It was

a provision to amend the Mineral Leasing Act ("MLA") to increase Alaska's share of mineral leasing revenues. That Act, adopted in 1920, governs the procedures for the issuance and administration of mineral leases on federal lands. *See* 30 U.S.C. §§ 181-287 (1994). Specifically, section 35 of the MLA, codified at 30 U.S.C. § 191, covers the disposition and disbursement of royalties received from certain federal mineral leases.

Prior to 1957, section 35 read, in relevant part, as follows:

> All money received from sales, bonuses, royalties, and rentals of public lands . . . shall be paid into the Treasury of the United States; 37½ per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State or the Territory of Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys to be used by such State, Territory, or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State or Territory may direct; and, excepting those from Alaska, 52½ per centum thereof shall be paid into, reserved and appropriated, as a part of the reclamation fund created by [the Reclamation Act]. . . .

30 U.S.C. § 191 (1952).[10] Because Alaska was not covered by the Reclamation Act of 1902,[11] it was not eligible for the additional 52½ percent. In practical terms, therefore, Alaska, unlike the existing States, received only

---

[10] Alaska began receiving 37½ percent of mineral royalties when the MLA was amended in 1947.

[11] The Reclamation Act of 1902 established a fund to promote the development of arid lands through irrigation. 43 U.S.C. § 372 *et seq.* (1994), 32 Stat. 388 (1902).

37½ percent of revenues from federal mineral leasing within Alaska.

The process by which the proposed amendment to section 35 became part of the statehood proposal is of consequence to this lawsuit. The issue was first raised in 1957, when, independently of the Statehood Bill, Alaska Delegate Bartlett proposed to amend section 35 to give Alaska the entire 90 percent revenue distribution. H.R. 3477, 85th Cong., 1st Sess. (1957). During the debate on statehood that year, however, both Assistant Secretary of Interior Chilson and Senator Bartlett of Wyoming recommended including the provision in the statehood legislation then under consideration rather than in stand-alone legislation. H.R.REP. No. 156, 85th Cong., 1st Sess. 2-3 (1957); *Alaska Statehood: Hearings on S. 49 and S. 35 Before the Senate Comm. on Interior and Insular Affairs,* 85th Cong., 1st Sess. 31-32, 66-67 (1957). Neither Barrett nor Chilson indicated why that change should go into the Statehood Bill. Nevertheless, the proposl was incorporated into section 28(b) of the Statehood Bill. It was understood that the proposal, if adopted, would give Alaska a total of "ninety percent of the royalty income from the minerals under the [Mineral] Leasing Act. . . ." *Alaska Statehood: Hearings on S. 49 and S. 35 Before the Senate Comm. on Interior and Insular Affairs,* 85th Cong., 1st Sess. 31 (1957) (statement of Senator Barrett.

Senator Barrett and others argued that the fact that the Territory of Alaska did not receive Reclamation Act revenues was unfair, and that eliminating that unfairness would also provide the Territory or State of Alaska with additional revenues. In discussing the fact that Alaska received only 37½ percent of leasing revenues, Barrett stated:

> I think it would be eminently fair and just and right and proper, when we write this bill up, that we provide here that the Leasing Act [be amended to include an additional 52½ percent]. [G]ive the Terri-

> tory now and the state of Alaska to be ninety percent of the income from the Leasing Act royalties that come in from now on out. I believe you need it; I think it ought to be done.

Alaska Statehood: Hearings on S. 49 and S. 35 Before the Senate Comm. on Interior and Insular Affairs, 85th Cong., 1st Sess. 31 (1957); *see* H.R.REP. No. 156, 85th Cong., 1st Sess. 2 (1957). This view was also supported by a House Report discussing section 28:

> Subsection (b) amends the act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain approved February 25, 1920 [the MLA], by providing that 52½ percent of the proceeds received therefrom shall be covered into the State treasury for disposition by the State legislature.
>
> The payments of these proceeds is recommended in return for Alaska not being covered by the Reclamation Act of 1902, as amended. The Reclamation Act provides that 52½ percent of the oil and gas revenues goes into the reclamation fund; 37½ percent is returned to the respective States and the remaining 10 percent is retained by the Federal Government for administration purposes.

H.R.REP. No. 624, 85th Cong., 1st Sess. 23 (1957), U.S.Code Cong. & Admin.News 1958, pp. 2955-56.

The 1957 Statehood Bill did not pass, however. Instead, Congress elected to adopt Senator Barrett's proposal as a separate amendment to the MLA. Enacted in 1957, Public Law 85-88 ("P.L. 85-88") provided that the Territory of Alaska would receive the additional 52½ percent, not through the Reclamation Act as in the case of other States, but by appropriating the money directly for disposition by the Territorial Legislature: Act Relating to Moneys Received from Mineral Lands in Alaska, Pub.L.

No. 85-88, 71 Stat. 282 (1957) (amending 30 U.S.C. § 191). P.L. 85-88 states:

> [Section 35 of the MLA] . . . is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following ", and of those from Alaska 52½ per centum thereof shall be paid to the [Territory] of Alaska for disposition by the legislature thereof."

Thus, even before statehood legislation was adopted the following year, the Territory began receiving 90 percent of the gross proceeds generated under section 35 of the MLA.[12]

When a new Statehood Bill was introduced the following year, Senator Barrett's proposal to amend the MLA was again included as section 28(b). After the Statehood Bill finally passed, section 28(b) removed all references to the Territory of Alaska in section 35 in favor of references to the State of Alaska. *See* 30 U.S.C. § 191 (1964).[13] The effect of section 28(b), therefore, was to

---

[12] Prior to recent amendments, section 35 was silent as to whether the amounts were to be taken from gross or net proceeds. In practice, Alaska received 90 percent of the gross proceeds from oil and gas leases on federal lands located within Alaska from 1958 until 1990. The 10 percent withheld by the Federal Government was understood to cover the costs of administering the MLA. H.R.REP. No. 624, 85th Cong., 1st Sess. 23 (1957) U.S.Code Cong. & Admin. News 1958, p. 2940 (stating, "[T]he remaining 10 percent is retained by the Federal Government for administration purposes.").

[13] The MLA has been amended several times since 1958 and currently reads in relevant part:

> (a) All money received from sales, bonuses, royalties including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982, and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof, shall be paid into the Treasury of the United States; and, subject to the provisions of subsection (b) of this section, 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which

give the State, rather than the Territory, the right to 90 percent of mineral royalties. The substantive change in allocation had already occurred as a result of P.L. 85-88.

> the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: . . . .
>
> (b)(1) In calculating the amount to be paid to States during any fiscal year under this section or under any other provision of law requiring payment to a State of any revenues derived from the leasing of any onshore lands or interest in land owned by the United States for the production of the same types of minerals leasable under this chapter or of geothermal steam, 50 percent of the portion of the enacted appropriation of the Department of the Interior and any other agency during the preceding fiscal year allocable to the administration of all laws providing for the leasing of any onshore lands or interest in land owned by the United States for the production of the same types of minerals leasable under this chapter or of geothermal steam, and to enforcement of such laws, shall be deducted from the receipts derived under those laws in approximately equal amounts each month (subject to paragraph (4)) prior to the division and distribution of such receipts between the States and the United States.
>
> . . . .

30 U.S.C. § 191 (1994). Subsection (b), which was not added until 1993, divides the cost of administering the MLA between the Federal Government and the States. Prior to that time, the Federal Government alone was responsible for paying the administrative costs of the MLA. The 1988 version of Section 191 ended with the following sentence: "In determining the amount of payments to States under this section the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States." 30 U.S.C. § 191 (1988).

The Statehood Act

In its final form, the Alaska Statehood Act consists of 30 sections. 48 U.S.C. *note prec.* § 21 (1994), 72 Stat. 39 (1958). Many of these are administrative or transitional in nature or otherwise have no bearing on the present controversy. The relevant sections are as follows:

Section 2 deals with the territory of the new State. It provides:

> The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, now included in the Territory of Alaska.

Section 4 states in relevant part:

> As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act
>
> . . . .

Section 5 governs title to property:

> The State of Alaska and its political subdivisions respectively, shall have and retain title to all property, real and personal, title to which is in the Territory of Alaska or any of the subdivisions. Except as provided in section 6 hereof, the United States shall retain title to all property, real and personal, to which it has title, including public lands.

Section 6, among other things, allows the State to choose 103,350,000 acres of federal land. The section also contains many of the other property grants including the granting of certain real property in Alaska upon which government buildings are located, and the grants of seventy percent of the revenues from the Pribilof seal harvests and five percent of the proceeds from the sale of public land in Alaska.

Section 8 provides that Alaska will only become a State if a majority of the people of Alaska vote affirmatively on the following three propositions:

> (1) Shall Alaska immediately be admitted into the Union as a State?
>
> (2) The boundaries of the State of Alaska shall be as prescribed in the Act of Congress approved (date of approval of this Act) and all claims of this State to any areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States.
>
> (3) All provisions of the Act of Congress approved (date of approval of this Act) reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people.

Section 28(b), the section which the State alleges in count V was breached by the Federal Government, amends the MLA as discussed above.[14]

The Ratification Debate

Alaska could not be certified by the President as a State unless there were affirmative votes on the three questions posed in section 8 of the Statehood Act. Those questions are quoted above. In its argument as to the meaning of the Statehood Act, plaintiff draws from the public debate surrounding the plebiscite. Specifically, the State

---

[14] The parallel provision, section 28(a), amended 48 U.S.C. § 439 (1952) to give Alaska 90 percent of the *net* profits from the coal mining operations on government lands. Section 439 was first amended by P.L. 85-88 using similar language to that used in 28(a) so as to give the Territory of Alaska 90 percent of the *net* profits from coal mining. Section 439 was subsequently repealed in 1959 by Pub.L. No. 86-252, 73 Stat. 490 (1959).

focuses on the third proposition, which it feels placed the main provisions of the Statehood Act before the people of Alaska. By putting question three on the ballot, and asking the citizens to approve the "grants of land and other property," the State asserts that Congress agreed to be bound by section 28(b), which the State views as a grant of "other property."

The State particularly relies on the statements of Secretary of the Interior Fred A. Seaton, a major proponent of statehood, who gave numerous speeches in support of statehood, and, in the process, gave his views on what statehood would mean for Alaska.

During a speech before the Anchorage Chamber of Commerce on August 26, 1958, Secretary Seaton explained the third proposition:

> Now let's turn to proposition three: "All provisions of the Act of Congress approved July 7, 1958, reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people."
>
> A "yes" on this one means principally two things. It means that the voter approves of granting the President power to create special withdrawals, mainly in northern and western Alaska, in the interest of national defense.
>
> . . . .
>
> A "yes" on proposition three also means, that the voter approves of the State's selecting from federally owned public lands approximately 103 million acres over a 25 year period. This is the most generous amount of land ever given to a State before admission into the Union.

> There, in brief, are the three propositions. Not one is complicated. Not one is unique to Alaska, except for the generosity of the Federal land grant to the new State. Not one curtails any of the rights and privileges which Alaskans now have.

Alaska App. 27 at 2,[15] Address by Secretary of the Interior Fred A. Seaton to the Chamber of Commerce, Anchorage, Alaska (Aug. 25, 1958) (the "Anchorage Address").

During an earlier speech on August 23, 1958, at the dedication of the Wickersham Monument in Fairbanks, Secretary Seaton also discussed the meaning of proposition three:

> In the third proposition, the key question is this: "Do you approve granting the President power, if necessary, to make special national defense withdrawals within the State?" This power to be granted to the President is no greater than that already freely given in twenty-five States. It is essential to the national defense. It provides for the continuance of state law and for the right of the individual within any area which may possibly be withdrawn.

Alaska App. 26 at 2, Address by Secretary of Interior Fred A. Seaton at the Dedication of the Wickersham Monument, Fairbanks, Alaska (Aug. 23, 1958) (the "Fairbanks Address"). In addition to these general statements, Secretary Seaton also described section 28(b). He stated that under the Statehood Act "the State gets 90 percent of all bonuses, royalties, and rentals for mineral leasing on Federal lands." Alaska App. 26, at 3. He iterated this proposition during the speech before the Anchorage Chamber of Commerce two days later when he

---

[15] "Alaska App." refers to the appendix filed by plaintiff, State of Alaska, along with its Motion for Partial Summary Judgment, on November 30, 1994.

stated, "the [Statehood] Act reaffirms Alaska's preferential treatment in receiving 90 percent of all revenues from oil, gas, and coal leasing on the public domain." Alaska App. 27 at 4.

The people of the Territory overwhelmingly voted in favor of Statehood, answering all three propositions in the affirmative. President Eisenhower proclaimed Alaska a State on January 3, 1959. Proclamation. No. 3269, 73 Stat. c16 (Jan. 3, 1959).

Development of the Current Dispute

Diminishing oil revenues

Between 1958 and 1966 the Federal Government offered approximately 18.8 million acres of federal land in Alaska for oil and gas leasing and Alaska received 90 percent of the revenues from those leases. While these revenues have been substantial, the receipts have been less than those received by some other States from federal mineral leasing. Since 1966, however, the number of leases issued has been drastically reduced. Some additional federal lands have been opened up for leasing but these have been unsubstantial. *See* Merrill Aff. at 1-2.[16]

By far most of Alaska's oil revenues have come from State-owned lands, particularly from the huge Prudhoe Bay field on the North Slope. Oil from the North Slope is marketable because of the construction of the Trans-Alaska Pipeline ("TAPS"), which moves oil from Prudhoe Bay to the year-round port at Valdez. It is estimated, however, that 74 percent of the Prudhoe Bay recoverable reserves have been produced. Production from the North Slope started declining before 1990. TAPS currently has a surplus capacity of about 600,000 barrels of oil per day.

---

[16] Robert Merrill is a staff land law examiner in the Division of Lands, Minerals and Resources in the Alaska State Office of the Bureau of Land Management. U.S. Department of the Interior.

One of the most promising potential areas for future oil and gas exploration lies within the 1.5 million acre coastal plain of ANWR.[17] The lands in ANWR were temporarily withdrawn from mineral leasing in 1981, however, by the Alaska National Interest Lands Conservation Act ("ANILCA").[18] ANILCA called for a moratorium on leasing so that the oil and gas potential of ANWR could be determined. It directed the Department of the Interior "to engage in a comprehensive study of the area over at least 5 years, . . . and then report back to Congress on the nature of those findings so Congress would be in a position to make a fully informed decision regarding the management of this particular area." *Arctic National Wildlife Refuge (ANWR): Oversight Hearings Before the Subcommittee on Water and Power Resources of the House Committee on Interior and Insular Affairs,* 100th Cong., 1st Sess. Part I at 8 (Apr. 30, 1987) (Testimony of William Horn, Asst. Secretary of Interior for Fish and Wildlife and Parks).

In April of 1987, the Secretary submitted the required reports and recommendations to Congress. Alaska Supp. App. 15, *Arctic National Wildlife Refuge, Alaska, Coastal Plain Resource Assessment.* The Secretary recommended that the entire ANWR coastal plain be made available for oil and gas leasing. *Id.* at 3. He followed this recommendation with the statement: "Although the entire area should be considered for leasing, only a percentage would actually be leased, an even smaller percentage would be explored, and—if oil is discovered—a still smaller percentage would be developed." *Id.* at 3. In response to this recommendation, Congress, over several years, con-

---

[17] ANWR in its entirety consists of 19 million acres.

[18] Pub.L. No. 96-487, 94 Stat. 2371 (Dec. 2, 1980). The 1.5 million acre coastal plain of ANWR was designated for withdrawal and study under section 1002 of ANILCA and, therefore, is often referred to as the "1002 area."

ducted numerous hearings on the issue, but, since 1991, there has been no Congressional action on the future of ANWR. *See* 138 CONG.REC. S822-06 (Feb. 3, 1992).[19]

Purely from the standpoint of national oil and gas policy, the State makes a compelling argument that not opening up a part of ANWR will jeopardize any use of TAPS after the year 2009. Therefore, although the court does not view the issue as directly bearing on the construction of the Statehood Act, it will assume for purposes of ruling on the motion that logic and the national interest dictate that TAPS should be more fully utilized by opening up portions of ANWR to oil exploration. As stated in the affidavit of James E. Easton, until 1995, Director of the State of Alaska's Division of Oil and Gas, "The long term stability of Alaska's economy is dependent upon the systematic exploitation of Alaska's oil and gas resources." Eason Aff. at 14, ¶ 28. Because of the long lead time involved in leasing, exploration, production and delivery, the State contends that the time to open up new fields, particularly within ANWR, is now.

In counts I through IV of its complaint, the State alleges that there is an implied promise within section 28(b) that the Federal Government will administer its lands within Alaska in such a way that they are productive of revenues for the State. In response to the defendant's assertion of a statute of limitations defense, the State has taken the position that the breach of this implied promise occurred when Congress refused since 1987 to act affirmatively on the Secretary's recommendation to open up a portion of ANWR for leasing. The viability of these allegations are put at issue by the Federal Government's motion for summary judgment.

---

[19] *See* Alaska Supp.App. 24 at 2, *CRS Report for Congress: Arctic National Wildlife Refuge; Congressional Consideration Since the 99th Congress*, 2 (April 5, 1991) ("In the 99th and later Congresses, dozens of bills have been introduced and over 25 days of hearings have been held.").

The Change from Net to Gross Proceeds

From 1920 until 1991, the states or territories received 90 percent of *gross* mineral leasing revenues. It was understood that the ten percent kept by the Treasury paid for the administrative expenses of the Federal Government.[20] Beginning in fiscal year 1991, however, through Department of Interior appropriations, Congress began to deduct the Department of Interior's costs for administering the MLA, prior to the calculation of amounts to be distributed to the States, thus calculating the states' share of proceeds on 90 percent of the net amount of revenues collected. Pub.L. No. 101-512, 104 Stat. 1915, 1926 (1990) (providing for the deduction of $68,200,000 from "Federal onshore mineral leasing receipts prior to the division and distribution of such receipts between the States and the Treasury . . ."). Similar provisions were made in the appropriations for fiscal years ending in 1992,[21] and 1993.[22]

In 1993, Congress amended section 191 of the MLA, inserting language directing that the costs of administering the mineral leasing program would be divided among the several States and the Federal Government. Pub.L. No. 103-66, § 10201(2), 107 Stat. 407 (1993). As a result, the Minerals Management Service, the agency within the Department of the Interior charged with administering mineral leases, began deducting administrative expenses from Alaska's mineral royalty receipts. Strickland Aff. ¶ 4.[23] A total of $2,330,456.15 has been de-

---

[20] H.R.REP. No. 624, 85th Cong., 1st Sess. 23 (1957).

[21] Pub.L. No. 102-154, 105 Stat. 990, 1001 (1991) ($68,200,000 deduction).

[22] Pub.L. No. 102-381, 106 Stat. 1374, 1385 (1992) ($76,850,000 deduction).

[23] Ms. Strickland is an accountant in the Royalty Accounting Section, Division of Oil and Gas, Alaska Department of Natural Resources.

ducted from Alaska's receipts for administrative costs from November 1990 through October 1994. Strickland Aff. ¶ 10.

In count V of its complaint, Alaska alleges that the formula for distribution of revenues in place at the time of statehood, namely, 90 percent of gross as opposed to net receipts, could not be altered with respect to Alaska. Unlike the situation with other states, it contends that that method of allocation was included in section 28(b) of its Statehood Act and, therefore, constitutes a binding contractual obligation of the Federal Government. It follows, according to the State, that the legislative change requiring that the State's share of revenues be based on gross instead of net receipts constituted a violation of that contract.

DISCUSSION

In its motion, the State asks the court to determine that the Statehood Act is a contractually binding agreement, and, specifically, that section 28(b) constitutes an enforceable term of that contract. Assuming that it is, the State then asks the court to construe the section to contain the following promises by the Federal Government: 1) that Alaska would, for all time, receive 90 percent of *gross* revenues from royalty payments on mineral leases on lands within Alaska; and, 2) that along with that promise, the United States assumed the burden to develop and lease the federal mineral estates in Alaska. The State has moved for summary judgment only on the first alleged breach of promise.

Both promises, however, along with the taking claim stated in count IV, are put in issue by the Federal Government's motion. Although the motion raises a number of defenses, two are key. The first is that section 28(b) is not an enforceable provision. The second is that, even if section 28(b) constituted an enforceable portion of the Statehood Act, that section does not include either a promise to grant Alaska ninety percent of gross mineral

leasing revenues or a promise to actively develop mineral leasing on federal lands.[24]

The Supreme Court has not utilized a strict taxonomy in dealing with the interpretation of statehood acts. Such enactments have been construed to partake of the character of contracts in some respects, and in other respects the character of normal legislation. *See Oklahoma v. New Mexico*, 501 U.S. 221, 235 n. 5, 111 S.Ct. 2281, 2289 n. 5, 115 L.Ed.2d 207 (1991). Plainly the Court has taken the view that they can be drafted in such a way as to make particular provisions binding and unalterable. *Andrus v. Utah*, 446 U.S. 500, 507, 100 S.Ct. 1803, 1807, 64 L.Ed.2d 458 (1979) (land grant in Statehood Act was a " 'solemn agreement' which in some ways may be analogized to a contract between private parties."); *United States v. Morrison*, 240 U.S. 192, 201, 36 S.Ct. 326, 329, 60 L.Ed. 599 (1915) (land grant provision of Statehood Act was a compact); *Stearns v. Minnesota*, 179 U.S. 223, 244, 21 S.Ct. 73, 81, 45 L.Ed. 162 (1900) ("[The] provisions of the enabling act and the constitution, in form at least, made a compact between the United States and the State. . . ."). Other provisions have been treated as routine legislation, however.[25] *Alaska v. Andrus*, 429 F.Supp. 958 (D.Alaska 1977) (holding that section 6(e) of the Statehood Act which gives Alaska

---

[24] The Federal Government also contends that count IV must be dismissed, because, if there is no contract right as alleged, then there is no property that could have been taken. Furthermore, the Government contends that all five counts are untimely brought.

[25] Some technical or housekeeping provisions no doubt were understood to be alterable. For example, section 12(b) of the Statehood Act states: "Alaska constitutes one judicial district. Court shall be held at Anchorage, Fairbanks, Juneau, and Nome." Since the passage of the Statehood Act, the population of Alaska has increased and the District Court of Alaska now sits in Ketchikan as well. *See* 28 U.S.C. § 81A (1994) (as amended by Pub.L. No. 86-70, 73 Stat. 147 (1959)). Presumably Congress could also create a second judicial district as well.

control of wildlife in Alaska must give way to a subsequent federal statute relating to management of wildlife on federal lands), *aff'd*, 591 F.2d 537 (9th Cir.1979).

Although the State asks the court to rule that the entire Statehood Act is a binding contract, it is unnecessary for the court to resolve that issue. Because parts of a statehood compact can be binding, and because the State's case rests on Section 28(b), it is enough to consider the legal effects of that provision.

The Federal Government argues that section 28(b) was merely a technical amendment, designed to avoid any argument that the new State would not receive the benefit of P.L. 85-88. It follows, according to defendant, that section 28(b) was not intended to bind the Federal Government in perpetuity to a particular version of the MLA. To support this contention, defendant points to the Senate Committee Report addressing the various sections of the Statehood Act. That report grouped section 28(b)[26] under 'Miscellaneous Provisions" and more particularly described it as:

> [A]n amendment adopted by the committee for the purpose of authorizing payment to Alaska of 90 percent of the proceeds derived in Alaska under the Mineral Leasing Act and the Alaska Coal Leasing Act. This merely applies the provisions of . . . [P.L. 85-88] . . . to the State of Alaska, whereas it presently applies to the Territory.

S.REP. No. 1163, 85th Cong., 1st Sess. 29 (1957).[27]

---

[26] In this report Section 28 is labeled as Section 22.

[27] Statements by other Congressmen suggest that they viewed the section as a technical amendment to make up for Alaska's exclusion from the Reclamation Act. *See* 104 CONG.REC. 9361 (1958) (Statement of Sen. Dawson of Utah) ("Additionally, Alaska would receive 90 percent of the proceeds from the operation of Government coal mines and from the production of coal, phosphates, oil, oil shale, and sodium from the public domain. Reflecting Alaska's

The Federal Government also points to a statement of Representative O'Brien of New York, a supporter of statehood. In response to the contention that the land grant provisions were excessive, particularly because mineral rights were not retained by the Federal Government, O'Brien pointed out that "[i]f there is a give away [of land or other property to the State of Alaska], with which I do not agree, it is already taking place because 90 percent of the revenue that the Federal Government presently collects from mineral leases in Alaska is turned back to the Territory of Alaska [by way of P.L. 85-88]." 104 CONG.REC. 9219 (1958); *see also* 104 CONG.REC. 9341 (1958) (Representative Saylor arguing that the 90 percent is not an incentive since the Territory was already receiving that amount); *Id.* at 9498 (same). The point of this reference, according to the Government, is that oil revenue sharing was already occurring and could not, therefore, have played much of a role in the ultimate ratification of statehood. As such, it contends that section 28(b) could not have been part of any specific agreement between the parties. Defendant further argues that Secretary Seaton's statements during two speeches just prior to the plebiscite are not entitled to any interpretive weight in construing section 28, and that, in any event, he made no specific promises to the voters beyond those in the Statehood Act.

The State views the same facts and sees a contract. It contends that section 28(b) was essential to the future well being of the fledging State and that its inclusion in the Statehood Act was instrumental in the passage of the

---

exclusion from the Reclamation Act of 1902, these are the same provisions which this Congress approved—by consent—for the Territory of Alaska last year in Public Law 85-88."); S.REP. No. 1163, 85th Cong., 1st Sess. 3 (1957) ("Section [28] of the bill extends to the State the provisions of Public Law [85-88 approved earlier this year]. . . . Without section [28] in the bill, the new State would not be within the purview of the 1957 act."); *see also* H.R.REP. No. 624, 85th Cong., 1st Sess. 23 (1957).

Act and the vote in favor of statehood by the people of Alaska. Accordingly, it should be construed as fixed in its 1958 form. The State directs the court to other points in the legislative history to support its position that section 28(b) was more than a mere technical amendment. The House Committee Report accompanying the 1958 Statehood Bill listed section 28(b) under the heading "Major Provisions of the Bill." H.R.REP. No. 624, 85th Cong., 1st Sess. 3 (1957). The House Report also listed the section when describing ways to counter the impact of the high percentage of federal withdrawals in Alaska. H.R. REP. No. 624, 85th Cong., 1st Sess. 8 (1957). It is the State's position that section 28(b) was a necessary component to achieving ratification. Concerns regarding the State's financial stability were so acute, it contends, that treating section 28(b) as changeable would constitute a breach of faith with the people of the State. It sees, moreover, in the statehood debate and related events, particularly the language of question three of the plebiscite and Secretary Seaton's statements interpreting this question, as a representation by the Federal Government that section 28(b) would not be altered.

The State points out that question three of the plebiscite asked Alaskan voters to agree to the grants of land or other property made in the Statehood Act. It contends that the grant of an unalterable 90 percent share of mineral leasing revenues constitutes a grant of "other property" and as such, was voted on by the people of Alaska. As the Federal Government points out, however, the Senate report accompanying the Statehood Bill suggests the contrary. Under the discussion heading, "Grants of Land and Other Property," only the grants made in section 6 are discussed, specifically the direct grants of land and buildings including the 103,350,000 acres, certain real and personal property used to conserve and protect Alaskan fisheries and wildlife, the Pribilof Island Seal royalties, the grant of five percent of the revenue generated by the sale of public lands in Alaska, granting the

State 12½ percent more of the revenues from national forests for a period of ten years,[28] as well as various other minor land grants and procedures governing land grants. S.REP. No. 1163, 85th Cong., 1st Sess. 16-21 (1957). Section 28(b) is not mentioned under this heading.

There are obvious flaws in both parties' positions. The State, for its part, does not give adequate consideration to the implications of the differences wrought by the legislative character of the entire Statehood Act. In addition, Alaska has overstated the importance of the revenue sharing provision. It was not viewed as the key component of financial viability for the State. Of the various sources of future income, the most important source was seen as the land grant. Among the other sources, revenue sharing under section 28(b) was not prominent. For example, when reciting sources of revenue to offset the costs of statehood, Representative Pfost of Idaho listed four: the "first" that came to her mind was the 70 percent of proceeds from the Pribilof Islands seal fisheries.[29] 104 CONG. REC. 9511 (1958). "Next" was income from fish and wildlife licenses. *Id.* The recent grant of 90 percent of gross revenues from mineral leasing was third on her list. *Id.* Fourth was receipts from timber sales. *Id.* Senator Kuchel of California addressed the financial provisions in the same order of precedence as did Pfost, i.e., placing revenue sharing third in his list. Moreover, the substance of section 28(b) was already in place for the Territory. *See* P.L. 85-88. Statehood would not have affected the amount of revenues. There is also reason to think that some of the special revenue provisions were viewed as a

---

[28] Congress specifically retained the power to change this provision. S.REP. No. 1163, 85th Cong., 1st Sess. 17 (1957).

[29] The House Report states that revenues from the Pribilof Islands would be "of material help to Alaska in meeting the anticipated greater costs of statehood." H.R.REP. No. 624, 85th Cong., 1st Sess. 8 (1958). Secretary Seaton estimated that those revenues would be the state's second largest source of new revenues behind the land grants. 104 CONG.REC. 12,208 (1958).

way to provide income primarily during the early years of statehood, as a bridge until state lands became productive.[30]

The court is equally unwilling, however, to accept without reservation defendant's contention that section 28(b) was not a substantive part of the compact. It was plainly viewed as one component in an effort to ensure that Alaska was financially viable. As stated in the House Report, "Some of the additional costs connected with statehood will be met by granting the State a reasonable return from Federal exploitation of resources within the new State." S.REP. No. 1163, 85th Cong., 1st Sess. 3 (1957). Without section 28(b), no provision of the Statehood Act automatically would have substituted the State for the Territory in terms of revenue sharing. The fact that such an omission could have been cleaned up in the Alaska Omnibus Act[31] passed the following year does not mean that the provision was not substantive. It clearly was part of a group of provisions that, together, ensured the financial viability of Alaska.

Ultimately, the subject matter of the Statehood Act—entry into a union of states—is *sui generis* and cannot be strictly compressed into a contractual or legislative mold. It is neither a garden variety contract or routine legislation. The statehood debate cannot be analogized to the normal negotiations between parties to commercial contracts. The Act was not negotiated in the same way as

---

[30] There were a number of special financial provisions in both the Statehood and Omnibus Acts that were meant to temporarily help the new state. *See* S.REP. No. 1163, 85th Cong., 1st Sess. 17 (1957) (subsection 6(g) of the Statehood Act grants the new State, for only 10 years, an additional 12½ percent of the money received from national forests in Alaska); S.REP. No. 1028, 83d Cong., 2d Sess. 8-12 (1954) (discussing the costs of statehood and ways to counter them through various programs and incentives).

[31] 48 U.S.C. *note prec.* § 21 (1994), Pub.L. No. 86-70 (June 25, 1959), 73 Stat. 141 (1959).

a normal contract. There were not two distinct parties. The plebiscite on statehood and the debate on the pros and cons of statehood concerned what was fundamentally a political issue.

In the final analysis, however, it is unnecessary to decide with exactitude whether Section 28(b) should be construed as a binding contract or as mere legislation. The court is prepared to assume, along with the State, that Section 28(b) is a contractually enforceable provision of the Statehood Act. The real question then becomes, what does Section 28(b) mean? Even if the provision is "unalterable," if it does not contain the promises alleged by the State, the Federal Government still prevails. In determining the meaning of Section 28(b), the court further is prepared to consider all the legislative and other materials put forward by the State.

What Obligations Did the United States Incur in the Statehood Act?

In determining whether Section 28(b) contains either of the specific implied promises alleged by the State, the beginning point for analysis is the express language of the provision.[32] By its terms, that section had the limited effect of substituting the State for the Territory in section 35 of the MLA. Thereafter, in practice, Alaska received 90 percent of gross mineral leasing revenues, *under* the MLA. The most straight forward reading of the section, even in light of its historical context, is as a device merely to put Alaska in the same position as other States. S.REP.

---

[32] The Supreme Court, in interpreting the Utah Enabling Act, stated that the express language of an act is conclusive of Congress' intent upon the point. *United States v. Sweet*, 245 U.S. 563, 567, 38 S.Ct. 193, 193, 62 L.Ed. 473 (1917). An exception to this would be if the "application of the words of the [statute] according to their obvious meaning effects a result inconsistent with the intent or expectations of its signatories." *Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 180, 102 S.Ct. 2374, 2377, 72 L.Ed.2d 765 (1982) (interpreting the United States—Japan Friendship, Commerce and Navigation Treaty) (citations omitted).

No. 1163, 85th Cong., 1st Sess. 4 (1957). Neither the Statehood Act or the MLA specifically require the Secretary to lease mineral deposits [33] nor does the Statehood Act specifically promise that royalties will always be calculated in the same way. The net effect of P.L. 85-88 and section 28(b) is that Alaska is simply plugged into the MLA, *along with the other States.* If this is correct, as the court believes, Congress has the power to amend the MLA to change the distribution formula and whatever changes Congress makes to it will affect all states, including Alaska. Section 28(b) would be unaffected by such changes, although revenues might be calculated in a different way.

The State contends, however, that the real meaning of Section 28(b) can only be derived by a much broader consideration of all the circumstances surrounding passage of the Statehood Act and the subsequent plebescite. Before considering whether that evidence supports either of the two promises alleged, however, the court will address, because of its importance to the State's argument, an issue common to both—namely, the impact of Secretary's Seaton's statements.

Apparently Secretary Seaton barnstormed the Territory in the weeks before the plebescite urging ratification. The State cites his comments that oil was recently discovered in the Kenai peninsula, that Alaska would get 90 percent of mineral leasing revenues,[34] and that the federal govern-

---

[33] The MLA has been construed to give the Secretary complete discretion regarding whether or not to lease certain lands. *Haley v. Seaton*, 281 F.2d 620, 625 (D.C.Cir.1960). It contains no mandate to lease. *Id.*

[34] During a speech in Anchorage on August 25, 1958, the Secretary stated:

> [T]he [Statehood] Act reaffirms Alaska's preferential treatment in receiving 90 percent of all revenues from oil, gas and coal leasing on the public domain. . . .
>
> . . . [A]ccording to an analysis prepared in the Department of the Interior, the additional costs of State Government will be

ment would "spur on" mineral leasing. Alaska App. 26 at 3-4. The State also points to his promises to open up parts of ANWR to leasing. Alaska App. 26 at 3; *see* Notice of Proposed Withdrawal and Reservation of Lands, 23 Fed.Reg. 364 (1958). These promises, according to the State, induced Alaskans into voting for Statehood under the mistaken belief that the Federal Government would actively manage federal lands in Alaska in a way that would maximize revenues from mineral resources.

Without suggesting that his statements were insincere, the court concludes that the State gives unwarranted weight to Secretary Seaton's comments. There is nothing in his statements specifically promising that Alaska would receive 90 percent of mineral leasing revenues in perpetuity or that the Federal Government would actively develop ANWR or other areas for leasing. His statements were general in nature and amounted to salesmanship. They are Seaton's enthusiastic projections of the future. Clearly not everyone in Congress was persuaded of the reliability of his representations. Senator Thurmond, during floor debate, took note of the Secretary's comments and urged his listeners to give "close scrutiny" to his "glowing pictures." 104 CONG.REC. 12,054 (1958).

Even if the Secretary's comments are elevated to the status of contract negotiations or legislative history, they were plainly not meant as literal promises or statutory construction. They could not be relied upon uncritically. The Secretary of Interior was not specially delegated by Congress either to negotiate or to interpret what it had

---

more than offset by the additional revenues made available to Alaska.

Alaska App. 27 at 4-5.

During a speech at Fairbanks on August 23, 1958, he stated: "Since early this year the Territory has received 90 percent of all oil lease revenues; the State of Alaska will continue to do so." Alaska App. 26 at 3.

done. While his promises or interpretations serve as part of the overall factual background, they were not spoken *ex cathedra*. Nor could he commit future Secretaries of the Interior to maintain particular policy initiatives.

Discipline must be imposed in determining the nature of the Federal Government's obligations to Alaska. They must have an anchor in written words adopted by Congress and ratified by the people of Alaska. For that reason, the Secretary's words are entitled to substantially less weight than the Act itself, and any consistent treatment given it in the legislative history.[35]

The Ninety Percent Provision

Alaska argues that section 28(b) requires the Federal Government to pay 90 percent of the gross revenues of mineral leasing to Alaska, not 90 percent of the net proceeds. It points out that section 28(a) of the Statehood Act refers to "[a]ll net profits from operation of Government coal mines . . ." while section 28(b) states: "[a]ll money received from sales, bonuses, royalties, and rentals of public lands under the provisions of this Act. . . ." The State argues that Congress could have, but did not, limit Alaska's share of oil and gas revenues to 90 percent of "net" revenues. Instead it provided that Alaska was entitled to 90 percent of "all money received," without deduction for administrative costs. Presumably Congress knew what it was doing in using "net" in section 28(a)

---

[35] The court notes that *Organized Village of Kake v. Egan*, 369 U.S. 60, 82 S.Ct. 562, 7 L.Ed.2d 573 (1962), relied on by plaintiff, does state "Section 4 [of the Statehood Act] must be construed in light of the circumstances of its formulation and enactment." *Id.* at 65, 82 S.Ct. at 565 (citing *Alaska Pac. Fisheries v. United States*, 248 U.S. 78, 87, 39 S.Ct. 40, 41, 63 L.Ed. 138 (1918)). The "circumstances" relied on in *Kake Village*, however, were primarily legislative history. Similarly, as *Alaska Pacific Fisheries*, stated, "[t]he question is one of construction—of what *Congress* intended . . . ." *Alaska Pac. Fisheries*, 248 U.S. at 87, 39 S.Ct. at 41 (emphasis added).

but not so limiting section 28(b). As the Supreme Court has recognized: "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23, 104 S.Ct. 296, 300, 78 L.Ed.2d 17 (1983) (citation omitted).

The question posed is whether Alaska, unique among the States, was given an enforceable right to insist, in perpetuity, on the particular legislative scheme then extant. Plainly it is possible for Congress to make such a promise. *See Winstar Corp., et al. v. United States*, 64 F.3d 1531 (Fed.Cir.1995) (*en banc*), *cert. granted*, —— U.S. ——, 116 S.Ct. 806, 133 L.Ed.2d 753 (1996) (No. 95-865). But a promise not to alter legislation is one that should not be lightly inferred into a contract. *See Trapper Mining Inc. v. Lujan*, 923 F.2d 774, 778 (10th Cir.) ("Congress is entitled to modify . . . contracts through subsequent legislation unless the right is 'surrendered in unmistakable terms' . . . The Supreme Court has repeatedly warned that interpretations of contracts which would immunize them from the sovereign power of the United States to change its laws should be avoided if possible.") (citing *Bowen v. Agencies Opposed to Social Security Entrapment*, 477 U.S. 41, 52-53, 106 S.Ct. 2390, 2396-97, 91 L.Ed.2d 35 (1986)), *cert. denied*, 502 U.S. 821, 112 S.Ct. 81, 116 L.Ed.2d 54 (1991).

The State's best evidence is a statement made by Senator Robertson during a debate on the 1958 Statement Bill and a statement in the Senate Report that accompanied the 1958 bill. In the floor debate, Senator Robertson stated, "Last year, Congress, in anticipation of statehood, and in lieu of participation in the Federal reclamation program, awarded Alaska 90 percent of *gross receipts* from the oil, gas, and coal leases on the public domain." 104 CONG.

REC. 12,032 (1958) (emphasis added). The Senate Report included the statement. "Section 2[8] . . . authorize[s] payment to Alaska of 90 percent of the proceeds derived in Alaska under the Mineral Leasing Act. . . ." S.REP. No. 1163, 85th Cong., 1st Sess. 29 (1957).

The difficulty with the State's references is that they reflect only what Congress undisputably did through section 28. It gave Alaska 90 percent of net revenues from federal coal mines in Alaska, and, like other states, 90 percent of gross revenues from other mineral lands. This 90 percent of gross revenues from other mineral lands amounted to 37½ percent by way of the MLA and the additional 52½ percent originally granted in P.L. 85-88. Statements describing the immediate effect of section 28(b) thus are not dispositive. Alaska was simply introduced into a pre-existing legislative scheme, one of the effects of which was to entitle it, at that time to 90 percent of gross receipts. Section 28(a) plugged Alaska into 48 U.S.C. § 439 (1952), which already used the phrase "net" in granting the Territory of Alaska a share of coal revenues from federal coal mining operations in Alaska. Section 28(b), on the other hand, plugged Alaska into 30 U.S.C. § 191, which was then calculated based on gross receipts. The use of the term "net" in section 28(a) thus loses much of its significance.

The State's reliance on evidence of the importance of section 28(b) to solving the financial instability problem are thus diminished in consequence. Revenue sharing would still aid the State financially, even if it was assumed that Alaska's share would be calculated in the same way as other states'. While it is true that the inclusion of revenue sharing provisions was an important part of the mix of provisions necessary to address concerns about how the new State would be financed, it is also inescapable that there were no expectations or intent that Alaska's position would be privileged as against other States, at least in this

respect. In fact, the opposite is true. Most telling in this respect is the statement in the House Report, that "The financial measures of the bill certainly provide no more than a measure of Federal cooperation in Alaska's new venture. The bill does not grant any advantage over existing States." S.REP. No. 1163 85th Cong., 1st Sess. 4 (1957). Yet an advantage is precisely what Alaska would get if its insertion into the MLA carried with it an exemption from subsequent changes to the MLA. Therefore, the court holds there was no promise on the part of the Federal Government to pay Alaska, in perpetuity, 90 percent of gross mineral leasing revenues from federal mineral leases in Alaska. Accordingly, summary judgment for defendant on count V is appropriate.

Implied Duty to Develop

It next must be determined if the revenue sharing provision in section 28(b) carried with it an implied duty to develop and manage Federal mineral lands in such a way as to maximize the amount of revenue Alaska would receive. To establish this implied duty the State attempts to go beyond the express terms of section 28(b), and weave together principles of contract and oil and gas law. The State begins with the obligation, implied into every contract, that both parties will act in good faith and observe reasonable commercial standards of fair dealing in performing the contract. Restatement (Second) Contracts § 205. According to the State, this specifically means that the Federal Government agreed not to interfere with Alaska's reasonable expectations of a return on federal mineral lands. The duty of good faith and fair dealing, although implied, is a real obligation. Nevertheless, it is inadequate to the States purpose here. The implied obligation of good faith and fair dealing must attach to a specific substantive obligation, mutually assented to by the parties. In the present case, however, Alaska would have the implied duty of good faith and fair dealing create by

implication an express obligation to open up specific federal lands to generate additional revenue for the State. There is no such express substantive obligation in section 28(b).

The State next points to oil and gas law to support an obligation to lease. It suggests that the grant to the State of a right to MLA revenues creates, in effect, a non-participating royalty interest.[36] This interest, in turn, carries with it an implied duty to develop the mineral estate for the benefit of the royalty holder. Alaska points to several cases decided in other jurisdictions that impose on land owners a duty to develop the mineral estate when another party holds a non-participating royalty interest in the mineral estate. *See, e.g., Welles v. Berry*, 434 So.2d 982 (Fla.1983); *J.M. Huber Corp. v. Square Enters., Inc.*, 645 S.W.2d 410, 414 (Tenn. 1982).

In order to give some definition to the duty created, Alaska points to a decision by the Court of Claims in *Federal Land Bank of Houston v. United States*, 144 Ct.Cl. 173, 168 F.Supp. 788 (1958), which has become something of a landmark in the field. The facts there were that the original landowners transferred the land to a third party, but reserved a fractional non-participating royalty

---

[36] A non-participating royalty interest and the rights related to the interest were discussed in *Welles v. Berry*, 434 So.2d 982 (Fla. 1983). The court stated:

> A nonparticipating royalty is defined as an interest in the gross production of oil, gas, and other minerals carved out of the mineral fee estate as a free royalty, which does not carry with it the right to participate in the execution of, the bonus payable for, or the delay rentals to accrue under oil, gas, or mineral leases executed by the owner of the mineral fee estate. The exclusive leasing privilege which remains in the mineral fee owner is commonly referred to as the executive right. Non-participating royalty interests may be created by a grant or reservation, either prior or subsequent to a lease of the land for oil and gas purposes.

Id. at 984 (citations omitted).

interest. The fee eventually came to be owned by the United States, subject to the plaintiff's royalty interest. The royalty interest was of limited duration. Before it expired, oil or gas wells were drilled on adjacent property. The effect of those wells would have been to drain oil and gas from the property in question, if similar wells were not installed. Leases were executed on the subject property and producing oil and gas wells were installed. The wells came on line, however, after plaintiff's royalty interest expired. The court found that the Federal Government had delayed unduly in developing the wells to the plaintiff's injury, and in such a way that the United States benefitted from the delay. It stated the general rule to be, "as between the mineral fee owner and the royalty owner there is an implied covenant in the deed that the mineral fee owner will use the utmost fair dealing and diligence in obtaining lease agreements in order to protect the royalty owner's interest." 144 Ct.Cl. at 177, 168 F.Supp. at 791.

The court holds that this line of decisions is inapposite here. The common denominator in all of them is a specific conveyance of a particular parcel of land with a retained royalty interest, or a lease of mineral rights in a specific parcel. In *Federal Land Bank*, for example, the court makes it clear that the Federal Government's duty arose under the specific circumstances unique to the parcel in question. 144 Ct.Cl. at 178, 168 F.Supp. at 791-92. Otherwise there would have been no factual context in which to assess the obligations of the land owner. No comparable duty could arise in the present case because there is no specific parcel of land involved.

The difficulty with Alaska's argument becomes manifest in its response to the Federal Government's statute of limitations defense. The State attempts to avoid the twin risks of, on the one hand, a duty that is so ephemeral it cannot be articulated, and, on the other hand, one as to which the limitations period has run. It has not succeeded.

Alaska suggests that no duty arose until after Congress was confronted with the Department of Interior's ANWR report in 1987. The State's position is summed up in the affidavit of Mr. Eason in which he concludes, after summarizing the history of oil and gas exploration, leasing and production in Alaska, that "[w]hile there can be legitimate debate about the precise timing for when North Slope lands prospective for commercial oil and gas should be leased, there is no question in my mind that the time has arrived as regards the federal lands in ANWR, Yukon-Charley and Yukon Flats." Eason Aff. ¶ 22. The court has no reason to doubt the wisdom of Mr. Eason's assessment. Federal inaction is no doubt a source of enormous frustration to persons interested in seeing further production on the North Slope. Nevertheless, liability under the Tucker Act requires more than a contested claim that the executive or legislative branches have exercised poor judgment in managing a federal resource. In an effort to avoid a stale claim, the State is forced to defend a claim that has no parameters or pedigree.

As of 1991, the Federal Government still retained 248,021,000 acres of land in Alaska. Determining which lands to open up for leasing is a matter of judgment, considering a number of factors. Deciding the wisdom of leasing any particular parcel within those 248 million acres would inherently involve the court in weighing amorphous and circumstantial factors. The Federal Government's obligations would fluctuate from time to time depending on a confluence of politics, commerce, science, and serendipity. There are simply no judicially manageable standards to apply to such a decision-making process. Assuming such a continuing duty could ever arise, it could only be in the context of a fiduciary relationship. The State has not contended that such a relationship exists between itself and the Federal Government, and, in any event, it does not.

As defendant correctly points out, section 28(b) must be read against the background of two hundred years of law recognizing in the Federal Government a virtually unfettered discretion as to the management of its own lands. U.S. Const. art. IV, § 3, cl. 2 ("The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. . . ."); *Beecher v. Wetherby*, 95 U.S. 517, 24 L.Ed. 440 (1877) ("The right of the United States to dispose of the fee of lands occupied by them has always been recognized by this court from the foundation of the government."); *Gibson v. Chouteau*, 80 U.S. (13 Wall.) 92, 99, 20 L.Ed. 534 (1871) ("With respect to the public domain, the Constitution vests in Congress the power of disposition and of making all needful rules and regulations. That power is subject to no limitations."). It would fly in the face of that body of law to imply into section 28(b) an affirmative duty to develop the federal mineral lands in Alaska, particularly when, as discussed above, there would be no judicially manageable standards for determining whether the obligation was breached.[37]

---

[37] The present case can be analogized to *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 101 S.Ct. 2946, 69 L.Ed.2d 884 (1981). In *Commonwealth Edison*, several taxpayers challenged a Montana severance tax on coal as being violative of the Commerce and Supremacy Clauses of the United States Constitution. The Supreme Court upheld the tax on the following basis:

> [I]t is doubtful whether any legal test could adequately reflect the numerous and competing economic, geographic, demographic, social, and political considerations that must inform a decision about an acceptable rate or level of state taxation, and yet be reasonably capable of application in a wide variety of individual cases. But even apart from the difficulty of the judicial undertaking, the nature of the fact finding and judgment that would be required of the courts merely reinforces the conclusion that questions about the appropriate level of state taxes must be resolved through the political process.

Id. at 628, 101 S.Ct. at 2959. In the present case, the difficulty of the judicial undertaking to determine which Federal land in Alaska

The court concludes that the undisputed facts demonstrate as a matter of law that the United States made no promise to make federal mineral lands productive of royalty revenues for the State. Accordingly, summary judgment in favor of defendant on counts I through IV of plaintiff's complaint is appropriate.[38]

The United States' Affirmative Defenses

The Federal Government in its motion also raises the issue of whether counts I through IV of Alaska's complaint are timely. A contract or taking claim must be filed within six years of accrual. 28 U.S.C. § 2501. The present action was filed on July 22, 1993, more than six years, the Government contends, after events which would have put the State on notice of its current claims. The Government has also raised the "sovereign act" and "unmistakability doctrines" as defenses to the State's claim.[39] Be-

---

should or should not be leased would be enormous. As in *Commonwealth Edison*, the issue must be resolved through the political process.

[38] Count IV, the taking claim, is also dismissed. Because there was no contractual or other right to insist that the Federal Government develop its mineral lands in Alaska, no property interest was taken.

[39] The Sovereign Act Doctrine stands for the proposition that the "United States as a contractor cannot be held liable directly or indirectly for public acts of the United States as a sovereign." *Amino Bros. Co. v. United States*, 178 Ct. Cl. 515, 525, 372 F.2d 485, 491, *cert. denied*, 389 U.S. 846, 88 S.Ct. 98, 19 L.Ed.2d 112 (1967) (citing *Horowitz v. United States*, 267 U.S. 458, 45 S.Ct. 344, 69 L.Ed. 736 (1925)). Thus the focus is on whether the Federal Government acted in its contractual or sovereign capacity. *Id.* The reason for this is that Government contractors should not benefit more than private contractors when the Government passes a statute or takes other action affecting the public. Nash & Cibinic, ADMINISTRATION OF GOVERNMENT CONTRACTS 365 (1995).

The Unmistakability Doctrine states that courts should not interpret contracts in a way that "would immunize them from the sovereign power of the United States to change its laws. . . ."

cause the court concludes that there was no promise to pay Alaska 90 percent of gross revenues in perpetuity and there was no implied duty to develop the mineral lands, these defenses are moot.[40]

CONCLUSION

Based on the foregoing, Plaintiff's Motion for Partial Summary Judgment is denied. Defendant's Cross-Motion for Summary Judgment is granted. The Clerk is directed to enter judgment in favor of the defendant. No costs.

Trapper Mining Inc. v. Lujan, 923 F.2d 774, 778 (10th Cir.) ("Congress is entitled to modify . . . contracts through subsequent legislation unless the right is 'surrendered in unmistakable terms' . . .") (citing *Bowen v. Agencies Opposed to Social Security Entrapment*, 477 U.S. 41, 52-53, 106 S.Ct. 2390, 2396-97, 91 L.Ed.2d 35 (1986)), *cert. denied*, 502 U.S. 821, 112 S.Ct. 81, 116 L.Ed.2d 54 (1991); *Conoco Inc. v. United States*, 35 Fed. Cl. 309, 321 n. 7 (1996) ("The unmistakability doctrine . . . says that the government contractually waives neither its sovereign immunity nor its sovereign power to legislate, regulate, or tax unless that power is surrendered in 'unmistakable terms.' ").

[40] Because the untimeliness of a complaint affects the court's power to act, a statute of limitations defense is normally addressed before considering the merits of a claim. In this case, however, the State's assertion of what constitutes a breach of the alleged contract has varied during the litigation. The common assumption, however, is a contract with the alleged promises discussed above.

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

96-5134

STATE OF ALASKA,
Plaintiff-Appellant,

v.

THE UNITED STATES,
Defendant-Appellee.

JUDGMENT

On Appeal from the United States Court of Federal Claims in Case No(s). 93-454L

This CAUSE having been heard and considered, it is ORDERED and ADJUDGED:

AFFIRMED.

ENTERED BY ORDER OF THE COURT

Dated Jul. 8, 1997

/s/ Jan Horbaly
JAN HORBALY
Clerk

ISSUED AS A MANDATE: August 29, 1997

APPENDIX D

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK

September 22, 1997

Mr. Bruce M. Botelho
Department of Law
P.O. Box 110300
Juneau, AK 99811

Re: Alaska
v. United States
Application No. A-233

Dear Mr. Botelho:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to the Chief Justice, who on September 22, 1997, extended the time to and including November 5, 1997.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER
Clerk

By /s/ Melissa A. Blalock
MELISSA A. BLALOCK
Assistant Clerk

APPENDIX E

Public Law 85-508

AN ACT

To provide for the admission of the State of Alaska into the Union.

Be it enacted by the Senate and House of Representative of the United States of America in Congress assembled. That, subject to the provisions of this Act, and upon issuance of the proclamation required by section 8 (c) of this Act, the State of Alaska is hereby declared to be a State of the United States of America, is declared admitted into the Union on an equal footing with the other States in all respects whatever, and the constitution formed pursuant to the provisions of the Act of the Territorial Legislature of Alaska entitled, "An Act to provide for the holding of a constitutional convention to prepare a constitution for the State of Alaska: to submit the constitution to the people for adoption or rejection; to prepare for the admission of Alaska as a State; to make an appropriation; and setting an effective date", approved March 19, 1955 (Chapter 46, Session Laws of Alaska, 1955), and adopted by a vote of the people of Alaska in the election held on April 24, 1956, is hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified, and confirmed.

SEC. 2. The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, now included in the Territory of Alaska.

SEC. 3. The constitution of the State of Alaska shall always be republican in form and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence.

SEC. 4. As a compact with the United States said State and its people do agree and declare that they forever

disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives: that all such lands or other property, belonging to the United States or which may belong to said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation: *Provided*, That nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by the laws of the United States applicable thereto; and nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that any law applicable thereto authorizes, establishes, recognizes, or confirms the validity or invalidity of any such claim, and the determination of the applicability or effect of any law to any such claim shall be unaffected by anything in this Act: *And provided further*, That no taxes shall be imposed by said State upon any lands or other property now owned or hereafter acquired by the United States or which, as hereinabove set forth, may belong to said natives, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation.

SEC. 5. The State of Alaska and its political subdivisions, respectively, shall have and retain title to all property, real and personal, title to which is in the Territory of Alaska or any of the subdivisions. Except as provided

in section 6 hereof, the United States shall retain title to all property, real and personal, to which it has title, including public lands.

SEC. 6. (a) For the purposes of furthering the development of and expansion of communities, the State of Alaska is hereby granted and shall be entitled to select, within twenty-five years after the date of the admission of the State of Alaska into the Union, from lands within national forests in Alaska which are vacant and unappropriated at the time of their selection not to exceed four hundred thousand acres of land, and from the other public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection not to exceed another four hundred thousand acres of land, all of which shall be adjacent to established communities or suitable for prospective community centers and recreational areas. Such lands shall be selected by the State of Alaska with the approval of the Secretary of Agriculture as to national forest lands and with the approval of the Secretary of the Interior as to other public lands: *Provided*, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purposes whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied.

(b) The State of Alaska, in addition to any other grants made in this section, is hereby granted and shall be entitled to select, within twenty-five years after the admission of Alaska into the Union, not to exceed one hundred and two million five hundred and fifty thousand acres from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection: *Provided*, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsover, or shall affect the rights of any such owner, claim-

ant, locator, or entryman to the full use and enjoyment of the lands so occupied: *And provided further*, That no selection hereunder shall be made in the area north and west of the line described in section 10 without approval of the President or his designated representative.

(c) Block 32, and the structures and improvements thereon, in the city of Juneau are granted to the State of Alaska for any or all of the following purposes or a combination thereof: A residence for the Governor, a State museum, or park and recreational use.

(d) Block 19, and the structures and improvements thereon, and the interests of the United States in blocks C and 7, and the structures and improvements thereon, in the city of Juneau, are hereby granted to the State of Alaska.

(e) All real and personal property of the United States situated in the Territory of Alaska which is specifically used for the sole purpose of conservation and protection of the fisheries and wildlife of Alaska, under the provisions of the Alaska game law of July 1, 1943 (57 Stat. 301:48 U.S.C., secs. 192-211), as amended, and under the provisions of the Alaska commercial fisheries laws of June 26, 1906 (34 Stat. 478; 48 U.S.C., secs. 230-239 and 241-242), and June 6, 1924 (43 Stat. 465; 48 U.S.C., secs. 221-228), as supplemented and amended, shall be transferred and conveyed to the State of Alaska by the appropriate Federal agency: *Provided*, That the administration and management of the fish and wildlife resources of Alaska shall be retained by the Federal Government under existing laws until the first day of the first calendar year following the expiration of ninety legislative days after the Secretary of the Interior certifies to the Congress that the Alaska State Legislature has made adequate provision for the administration, management, and conservation of said resources in the broad national interest: *Provided*, That such transfer shall not include lands withdrawn or otherwise set apart as refuges or

reservations for the protection of wildlife nor facilities utilized in connection therewith, or in connection with general research activities relating to fisheries or wildlife. Sums of money that are available for apportionment or which the Secretary of the Interior shall have apportioned, as of the date the State of Alaska shall be deemed to be admitted into the Union, for wildlife restoration in the Territory of Alaska, pursuant to section 8 (a) of the Act of September 2, 1937, as amended (16 U.S.C., sec. 669g-1), and for fish restoration and management in the Territory of Alaska, pursuant to section 12 of the Act of August 9, 1950 (16 U.S.C., sec. 777k), shall continue to be available for the period, and under the terms and conditions in effect at the time, the apportionments are made. Commencing with the year during which Alaska is admitted into the Union, the Secretary of the Treasury, at the close of each fiscal year, shall pay to the State of Alaska 70 per centum of the net proceeds, as determined by the Secretary of the Interior, derived during such fiscal year from all sales of sealskins or sea-otter skins made in accordance with the provisions of the Act of February 26, 1944 (58 Stat. 100; 16 U.S.C., secs. 631a-631q), as supplemented and amended. In arriving at the net proceeds, there shall be deducted from the receipts from all sales all costs to the United States in carrying out the provisions of the Act of February 26, 1944, as supplemented and amended, including, but not limited to, the costs of handling and dressing the skins, the costs of making the sales, and all expenses incurred in the administration of the Pribilof Islands. Nothing in this Act shall be construed as affecting the rights of the United States under the provisions of the Act of February 26, 1944, as supplemented and amended, and the Act of June 28, 1937 (50 Stat. 325), as amended (16 U.S.C., sec. 772 et seq.).

(f) Five per centum of the proceeds of sale of public lands lying within said State which shall be sold by the United States subsequent to the admission of said State

into the Union, after deducing all the expenses incident to such sales, shall be paid to said State to be used for the support of the public schools within said State.

(g) Except as provided in subsection (a), all lands granted in quantity to and authorized to be selected by the State of Alaska by this Act shall be selected in such manner as the laws of the State may provide, and in conformity with such regulations as the Secretary of the Interior may prescribe. All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved, and each tract selected shall contain at least five thousand seven hundred and sixty acres unless isolated from other tracts open to selection. The authority to make selections shall never be alienated or bargained away, in whole or in part, by the State. Upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than ninety days before the date on which it otherwise becomes effective, if subsequent to the admission of Alaska into the Union, during which period the State of Alaska shall have a preferred right of selection, subject to the requirements of this Act, except as against prior existing valid rights or as against equitable claims subject to allowance and confirmation. Such preferred right of selection shall have precedence over the preferred right of application created by section 4 of the Act of Sept. 27, 1944 (58 Stat. 748; 43 U.S.C., sec. 282), as now or hereafter amended, but not over other preference rights now conferred by law. Where any lands desired by the State are unsurveyed at the time of their selection, the Secretary of the Interior shall survey the exterior boundaries of the area requested without any interior subdivision thereof and shall issue a patent for such selected area in terms of the exterior boundary survey; where any lands desired by the State are surveyed at the time of their selection, the boundaries of the area requested shall conform to the public land subdivisions established

by the approval of the survey. All lands duly selected by the State of Alaska pursuant to this Act shall be patented to the State by the Secretary of the Interior. Following the selection of lands by the State and the tentative approval of such selection by the Secretary of the Interior or his designee, but prior to the issuance of final patent, the State is hereby authorized to execute conditional leases and to make conditional sales of such selected lands. As used in this subsection, the words "equitable claims subject to allowance and confirmation" include, without limitation, claims of holders of permits issued by the Department of Agriculture on lands eliminated from national forests, whose permits have been terminated only because of such elimination and who own valuable improvements on such lands.

(h) Any lease, permit, license, or contract issued under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C., sec. 181 and following), as amended, or under the Alaska Coal Leasing Act of October 20, 1914 (38 Stat. 741; 30 U.S.C., sec. 432 and following), as amended, shall have the effect of withdrawing the lands subject thereto from selection by the State of Alaska under this Act, unless such lease, permit, license, or contract is in effect on the date of approval of this Act, and unless an application to select such lands is filed with the Secretary of the Interior within a period of five years after the date of the admission of Alaska into the Union. Such selections shall be made only from lands that are otherwise open to selection under this Act, and shall include the entire area that is subject to each lease, permit, license, or contract involved in the selections. Any patent for lands so selected shall vest in the State of Alaska all right, title, and interest of the United States in and to any such lease, permit, license, or contract that remains outstanding on the effective date of the patent, including the right to all rentals, royalties, and other payments accruing after that date under such lease, permit, license,

or contract, and including any authority that may have been retained by the United States to modify the terms and conditions of such lease, permit, license, or contract: *Provided,* That nothing herein contained shall affect the continued validity of any such lease, permit, license, or contract or any rights arising thereunder.

(i) All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: *Provided,* That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

(j) The schools and colleges provided for in this Act shall forever remain under the exclusive control of the State, or its governmental subdivisions, and no part of the proceeds arising from the sale or disposal of any lands granted herein for educational purposes shall be used for the support of any sectarian or denominational school, college, or university.

(k) Grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission. Effective upon the admission of the State of Alaska into the Union, section 1 of the Act of March 4, 1915 (38 Stat. 1214; 48 U.S.C., sec. 353), as amended, and the last sentence of section 35 of the Act of February 25, 1920 (41 Stat. 450; 30

U.S.C., sec. 191), as amended, are repealed and all lands therein reserved under the provisions of section 1 as of the date of this Act shall, upon the admission of said State into the Union, be granted to said State for the purposes for which they were reserved; but such repeal shall not affect any outstanding lease, permit, license, or contract issued under said section 1, as amended, or any rights or powers with respect to such lease, permit, license, or contract, and shall not affect the disposition of the proceeds or income derived prior to such repeal from any lands reserved under said section 1, as amended, or derived thereafter from any disposition of the reserved lands or an interest therein made prior to such repeal.

(*l*) The grants provided for in this Act shall be in lieu of the grant of land for purposes of internal improvements made to new States by section 8 of the Act of September 4, 1841 (5 Stat. 455), and sections 2378 and 2379 of the Revised Statutes (43 U.S.C., sec. 857), and in lieu of the swampland grant made by the Act of September 28, 1850 (9 Stat. 520), and section 2479 of the Revised Statutes (43 U.S.C., sec. 982), and in lieu of the grant of thirty thousand acres for each Senator and Representative in Congress made by the Act of July 2, 1862, as amended (12 Stat. 503; 7 U.S.C., secs. 301-308), which grants are hereby declared not to extend to the State of Alaska.

(m) The Submerged Lands Act of 1953 (Public Law 31, Eighty-third Congress, first session; 67 Stat. 29) shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder.

SEC. 7. Upon enactment of this Act, it shall be the duty of the President of the United States, not later than July 3, 1958, to certify such fact to the Governor of Alaska. Thereupon the Governor, on or after July 3, 1958, and

not later than August 1, 1958, shall issue his proclamation for the elections, as hereinafter provided, for officers of all elective offices and in the manner provided for by the constitution of the proposed State of Alaska, but the officers so elected shall in any event include two Senators and one Representative in Congress.

SEC. 8. (a) The proclamation of the Governor of Alaska required by section 7 shall provided for holding of a primary election and a general election on dates to be fixed by the Governor of Alaska: *Provided,* That the general election shall not be held later than December 1, 1958, and at such elections the officers required to be elected as provided in section 7 shall be, and officers for other elective offices provided for in the constitution of the proposed State of Alaska may be, chosen by the people. Such elections shall be held, and the qualifications of voters thereat shall be, as prescribed by the constitution of the proposed State of Alaska for the election of members of the proposed State legislature. The returns thereof shall be made and certified in such manner as the constitution of the proposed State of Alaska may prescribe. The Governor of Alaska shall certify the results of said elections to the President of the United States.

(b) At an election designated by proclamation of the Governor of Alaska, which may be the general election held pursuant to subsection (a) of this section, or a Territorial general election, or a special election, there shall be submitted to the electors qualified to vote in said election, for adoption or rejection, by separate ballot on each, the following propositions:

"(1) Shall Alaska immediately be admitted into the Union as a State?

"(2) The boundaries of the State of Alaska shall be as prescribed in the Act of Congress approved

(date of approval of this Act)

and all claims of this State to any

areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States.

"(3) All provisions of the Act of Congress approved ..... reserving rights or powers
(date of approval of this Act)
to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people."

In the event each of the foregoing propositions is adopted at said election by a majority of the legal votes cast on said submission, the proposed constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly. In the event any one of the foregoing propositions is not adopted at said election by a majority of the legal votes cast on said submission, the provisions of this Act shall thereupon cease to be effective.

The Governor of Alaska is hereby authorized and directed to take such action as may be necessary or appropriate to insure the submission of said propositions to the people. The return of the votes cast on said propositions shall be made by the election officers directly to the Secretary of Alaska, who shall certify the results of the submission to the Governor. The Governor shall certify the results of said submission, as so ascertained, to the President of the United States.

(c) If the President shall find that the propositions set forth in the preceding subsection have been duly adopted by the people of Alaska, the President, upon certification of the returns of the election of the officers required to be elected as provided in section 7 of this Act, shall thereupon issue his proclamation announcing the results of said election as so ascertained. Upon the issuance of said proclamation by the President, the State of Alaska shall be deemed admitted into the Union as provided in section 1 of this Act.

Until the said State is so admitted into the Union, all of the officers of said Territory, including the Delegate in Congress from said Territory, shall continue to discharge the duties of their respective offices. Upon the issuance of said proclamation by the President of the United States and the admission of the State of Alaska into the Union, the officers elected at said election, and qualified under the provisions for the constitution and laws of said State, shall proceed to exercise all the functions pertaining to their offices in or under or by authority of the government of said State, and officers not required to be elected at said initial election shall be selected or continued in office as provided by the constitution and laws of said State. The Governor of said State shall certify the election of the Senators and Representative in the manner required by law, and the said Senators and Representative shall be entitled to be admitted to seats in Congress and to all the rights and privileges of Senators and Representatives of other States in the Congress of the United States.

(d) Upon admission of the State of Alaska into the Union as herein provided, all of the Territorial laws then in force in the Territory of Alaska shall be and continue in full force and effect throughout said State except as modified or changed by this Act, or by the constitution of the State, or as thereafter modified or changed by the legislature of the State. All of the laws of the United States shall have the same force and effect within said State as elsewhere within the United States. As used in this paragraph, the term "Territorial laws" includes (in addition to laws enacted by the Territorial Legislature of Alaska) all laws or parts thereof enacted by the Congress the validity of which is dependent solely upon the authority of the Congress to provide for the government of Alaska prior to the admission of the State of Alaska into the Union, and the term "laws of the United States" includes all laws or parts thereof enacted by the Congress that (1) apply to or within Alaska at the time of the

admission of the State of Alaska into the Union, (2) are not "Territorial laws" as defined in this paragraph, and (3) are not in conflict with any other provisions of this Act.

SEC. 9. The State of Alaska upon its admission into the Union shall be entitled to one Representative until the taking effect of the next reapportionment, and such Representative shall be in addition to the membership of the House of Representatives as now prescribed by law: *Provided,* That such temporary increase in the membership shall not operate to either increase or decrease the permanent membership of the House of Representatives as prescribed in the Act of August 8, 1911 (37 Stat. 13) nor shall such temporary increase affect the basis of apportionment established by the Act of November 15, 1941 (55 Stat. 761: 2 U.S.C., sec. 2a), for the Eighty-third Congress and each Congress thereafter.

SEC. 10. (a) The President of the United States is hereby authorized to establish, by Executive order or proclamation, one or more special national defense withdrawals within the exterior boundaries of Alaska, which withdrawal or withdrawals may thereafter be terminated in whole or in part by the President.

(b) Special national defense withdrawals established under subsection (a) of this section shall be confined to those portions of Alaska that are situated to the north or west of the following line: Beginning at the point where the Porcupine River crosses the international boundary between Alaska and Canada; thence along a line parallel to, and five miles from, the right bank of the main channel of the Porcupine River to its confluence with the Yukon River; thence along a line parallel to, and five miles from, the right bank of the main channel of the Yukon River to its most southerly point of intersection with the meridian of longitude 160 degrees west of Greenwich; thence south to the intersection of said merid-

ian with the Kuskokwim River; thence along a line parallel to, and five miles from the right bank of the Kuskokwim River to the mouth of said river; thence along the shoreline of Kuskokwim Bay to its intersection with the meridian of longitude 162 degrees 30 minutes west of Greenwich; thence south to the intersection of said meridian with the parallel of latitude 57 degrees 30 minutes north; thence east to the intersection of said parallel with the meridian of longitude 156 degrees west of Greenwich; thence south to the intersection of said meridian with the parallel of latitude 50 degrees north.

(c) Effective upon the issuance of such Executive order or proclamation, exclusive jurisdiction over all special national defense withdrawals established under this section is hereby reserved to the United States, which shall have sole legislative, judicial, and executive power within such withdrawals, except as provided hereinafter. The exclusive jurisdiction so established shall extend to all lands within the exterior boundaries of each such withdrawal, and shall remain in effect with respect to any particular tract or parcel of land only so long as such tract or parcel remains within the exterior boundaries of such a withdrawal. The laws of the State of Alaska shall not apply to areas within any special national defense withdrawal established under this section while such areas remain subject to the exclusive jurisdiction hereby authorized: *Provided, however,* That such exclusive jurisdiction shall not prevent the execution of any process, civil or criminal, of the State of Alaska, upon any person found within said withdrawals: *And provided further,* That such exclusive jurisdiction shall not prohibit the State of Alaska from enacting and enforcing all laws necessary to establish voting districts, and the qualification and procedures for voting in all elections.

(d) During the continuance in effect of any special national defense withdrawal established under this section, or until the Congress otherwise provides, such exclusive

jurisdiction shall be exercised within each such withdrawal in accordance with the following provisions of law;

(1) All laws enacted by the Congress that are of general application to areas under the exclusive jurisdiction of the United States, including, but without limiting the generality of the foregoing, those provisions of title 18, United States Code, that are applicable within the special maritime and territorial jurisdiction of the United States as defined in section 7 of said title, shall apply to all areas within such withdrawals.

(2) In addition, any areas within the withdrawals that are reserved by Act of Congress or by Executive action for a particular military or civilian use of the United States shall be subject to all laws enacted by the Congress that have application to lands withdrawn for that particular use, and any other areas within the withdrawals shall be subject to all laws enacted by the Congress that are of general application to lands withdrawn for defense purposes of the United States.

(3) To the extent consistent with the laws described in paragraphs (1) and (2) of this subsection and with regulations made or other actions taken under their authority, all laws in force within such withdrawals immediately prior to the creation thereof by Executive order or proclamation shall apply within the withdrawals and, for this purpose, are adopted as laws of the United States: *Provided, however,* That the laws of the State or Territory relating to the organization or powers of municipalities or local political subdivisions, and the laws or ordinances of such municipalities or political subdivisions shall not be adopted as laws of the United States.

(4) All functions vested in the United States commissioners by the laws described in this subsection shall continue to be performed within the withdrawals by such commissioners.

(5) All functions vested in any municipal corporation, school district, or other local political subdivision by the

laws described in this subsection shall continue to be performed within the withdrawals by such corporation, district, or other subdivision, and the laws of the State or the laws or ordinances of such municipalities or local political subdivision shall remain in full force and effect notwithstanding any withdrawal made under this section.

(6) All other functions vested in the government of Alaska or in any officer or agency thereof, except judicial functions over which the United States District Court for the District of Alaska is given jurisdiction by this Act or other provisions of law, shall be performed within the withdrawals by such civilian individuals or civilian agencies and in such manner as the President shall from time to time, by Executive order, direct or authorize.

(7) The United States District Court for the District of Alaska shall have original jurisdiction, without regard to the sum or value of any matter in controversy, over all civil actions arising within such withdrawals under the laws made applicable thereto by this subsection, as well as over all offenses committed within the withdrawals.

(e) Nothing contained in subsection (d) of this section shall be construed as limiting the exclusive jurisdiction established in the United States by subsection (c) of this section or the authority of the Congress to implement such exclusive jurisdiction by appropriate legislation, or as denying to persons now or hereafter residing within any portion of the areas described in subsection (b) of this section the right to vote at all elections held within the political subdivisions as prescribed by the State of Alaska where they respectively reside, or as limiting the jurisdiction conferred on the United States District Court for the District of Alaska by any other provision of law, or as continuing in effect laws relating to the Legislature of the Territory of Alaska. Nothing contained in this section shall be construed as limiting any authority otherwise vested in the Congress or the President.

SEC. 11. (a) Nothing in this Act shall affect the establishment, or the right, ownership, and authority of the United States in Mount McKinley National Park, as now or hereafter constituted; but exclusive jurisdiction, in all cases, shall be exercised by the United States for the national park, as now or hereafter constituted; saving, however, to the State of Alaska the right to serve civil or criminal process within the limits of the aforesaid park in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State, but outside of said park; and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said park; and saving also to the persons residing now or hereafter in such area the right to vote at all elections held within the respective political subdivisions of their residence in which the park is situated.

(b) Notwithstanding the admission of the State of Alaska into the Union, authority is reserved in the United States, subject to the proviso hereinafter set forth, for the exercise by the Congress of the United States of the power of exclusive legislation, as provided by article I, section 8, clause 17, of the Constitution of the United States, in all cases whatsoever over such tracts or parcels of land as, immediately prior to the admission of said State, are owned by the United States and held for military, naval, Air Force, or Coast Guard purposes, including naval pretroleum reserve numbered 4, whether such lands were acquired by cession and transfer to the United States by Russia and set aside by Act of Congress or by Executive order or proclamation of the President or the Governor of Alaska for the use of the United States, or were acquired by the United States by purchase, condemnation, donation, exchange, or otherwise: *Provided,* (i) That the State of Alaska shall always have the right to serve civil or criminal process within the said tracts or parcels of land in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes com-

mitted within the said State but outside of the said tracts or parcels of land; (ii) that the reservation of authority in the United States for the exercise by the Congress of the United States of the power of exclusive legislation over the lands aforesaid shall not operate to prevent such lands from being a part of the State of Alaska, or to prevent the said State from exercising over or upon such lands, concurrently with the United States, any jurisdiction whatsoever which it would have in the absence of such reservation of authority and which is consistent with the laws hereafter enacted by the Congress pursuant to such reservation of authority; and (iii) that such power of exclusive legislation shall rest and remain in the United States only so long as the particular tract or parcel of land involved is owned by the United States and used for military, naval, Air Force, or Coast Guard purposes. The provisions of this subsection shall not apply to lands within such special national defense withdrawal or withdrawals as may be established pursuant to section 10 of this Act until such lands cease to be subject to the exclusive jurisdiction reserved to the United States by that section.

SEC. 12. Effective upon the admission of Alaska into the Union—

(a) The analysis of chapter 5 of title 28, United States Code, immediately preceding section 81 of such title, is amended by inserting immediately after and underneath item 81 of such analysis, a new item to be designated as item 81A and to read as follows:

"81A. Alaska";

(b) Title 28, United States Code, is amended by inserting immediately after section 81 thereof a new section, to be designated as section 81A, and to read as follows:

"§ 81A. Alaska

"Alaska constitutes one judicial district.

"Court shall be held at Anchorage, Fairbanks, Juneau, and Nome.":

(c) Section 133 of title 28, United States Code, is amended by inserting in the table of districts and judges in such section immediately above the item: "Arizona * * * 2", a new item as follows: "Alaska * * * 1";

(d) The first paragraph of section 373 of title 28, United States Code, as heretofore amended, is further amended by striking out the words: "the District Court for the Territory of Alaska,": *Provided*, That the amendment made by this subsection shall not affect the rights of any judge who may have retired before it takes effect;

(e) The words "the District Court for the Territory of Alaska," are stricken out wherever they appear in sections 333, 460, 610, 753, 1252, 1291, 1292, and 1346 of title 28, United States Code;

(f) The first paragraph of section 1252 of title 28, United States Code, is further amended by striking out the word "Alaska," from the clause relating to courts of record;

(g) Subsection (2) of section 1294 of title 28, United States Code, is repealed and the later subsections of such section are renumbered accordingly;

(h) Subsection (a) of section 2410 of title 28, United States Code, is amended by striking out the words: "including the District Court for the Territory of Alaska,";

(i) Section 3241 of title 18, United States Code, is amended by striking out the words: "District Court for the Territory of Alaska, the";

(j) Subsection (e) of section 3401 of title 18, United States Code, is amended by striking out the words: "for Alaska or";

(k) Section 3771 of ttile 18, United States Code, as heretofore amended, is further amended by striking out

from the first paragraph of such section the words: "the Territory of Alaska,";

(l) Section 3772 of title 18, United States Code, as heretofore amended, is further amended by striking out from the first paragraph of such section the words: "the Territory of Alaska,";

(m) Section 2072 of title 28, United States Code, as heretofore amended, is further amended by striking out from the first paragraph of such section the words: "and of the District Court for the Territory of Alaska";

(n) Subsection (q) of section 376 of title 28, United States Code, is amended by striking out the words: "the District Court for the Territory of Alaska,": *Provided*, That the amendment made by this subsection shall not affect the rights under such section 376 of any present or former judge of the District Court for the Territory of Alaska or his survivors;

(o) The last paragraph of section 1963 of title 28, United States Code, is repealed;

(p) Section 2201 of title 28, United States Code, is amended by striking out the words: "and the District Court for the Territory of Alaska"; and

(q) Section 4 of the Act of July 28, 1950 (64 Stat. 380; 5 U.S.C., sec. 341b) is amended by striking out the word: "Alaska,".

SEC. 13. No writ, action, indictment, cause, or proceeding pending in the District Court for the Territory of Alaska on the date when said Territory shall become a State, and no case pending in an appellate court upon appeal from the District Court for the Territory of Alaska at the time said Territory shall become a State, shall abate by the admission of the State of Alaska into the Union, but the same shall be transferred and proceeded with as hereinafter provided.

All civil causes of action and all criminal offenses which shall have arisen or been committed prior to the admission of said State, but as to which no suit, action, or prosecution shall be pending at the date of such admission, shall be subject to prosecution in the appropriate State courts or in the United States District Court for the District of Alaska in like manner, to the same extent, and with like right of appellate review, as if said State had been created and said courts had been established prior to the accrual of said causes of action or the commission of such offenses; and such of said criminal offenses as shall have been committed against the laws of the Territory shall be tried and punished by the appropriate courts of said State, and such as shall have been committed against the laws of the United States shall be tried and punished in the United States District Court for the District of Alaska.

SEC. 14. All appeals taken from the District Court for the Territory of Alaska to the Supreme Court of the United States or the United States Court of Appeals for the Ninth Circuit, previous to the admission of Alaska as a State, shall be prosecuted to final determination as though this Act had not been passed. All cases in which final judgment has been rendered in such district court, and in which appeals might be had except for the admission of such State, may still be sued out, taken, and prosecuted to the Supreme Court of the United States or the United States Court of Appeals for the Ninth Circuit under the provisions of then existing law, and there held and determined in like manner; and in either case, the Supreme Court of the United States, or the United States Court of Appeals, in the event of reversal, shall remand the said cause to either the State supreme court or other final appellate court of said State, or the United States district court for said district, as the case may require: *Provided*, That the time allowed by existing law for appeals from the district court for said Territory shall not be enlarged thereby.

SEC. 15. All causes pending or determined in the District Court for the Territory of Alaska at the time of the admission of Alaska as a State which are of such nature as to be within the jurisdiction of a district court of the United States shall be transferred to the United States District Court for the District of Alaska for final disposition and enforcement in the same manner as is now provided by law with reference to the judgments and decrees in existing United States district courts. All other causes pending or determined in the District Court for the Territory of Alaska at the time of the admission of Alaska as a State shall be transferred to the appropriate State court of Alaska. All final judgments and decrees rendered upon such transferred cases in the United States District Court for the District of Alaska may be reviewed by the Supreme Court of the United States or by the United States Court of Appeals for the Ninth Circuit in the same manner as is now provided by law with reference to the judgments and decrees in existing United States district courts.

SEC. 16. Jurisdiction of all cases pending or determined in the District Court for the Territory of Alaska not transferred to the United States District Court for the District of Alaska shall devolve upon and be exercised by the courts of original jurisdiction created by said State, which shall be deemed to be the successor of the District Court for the Territory of Alaska with respect to cases not so transferred and, as such, shall take and retain custody of all records, dockets, journals, and files of such court pertaining to such cases. The files and papers in all cases so transferred to the United States district court, together with a transcript of all book entries to complete the record in such particular cases so transferred, shall be in like manner transferred to said district court.

SEC. 17. All cases pending in the District Court for the Territory of Alaska at the time said Territory becomes a State not transferred to the United States District Court for the District of Alaska shall be proceeded with and determined by the courts created by said State with the

right to prosecute appeals to the appellate courts created by said State, and also with the same right to prosecute appeals or writs of certiorari from the final determination in said causes made by the court of last resort created by such State to the Supreme Court of the United States, as now provided by law for appeals and writs of certiorari from the court of last resort of a State to the Supreme Court of the United States.

SEC. 18. The provisions of the preceding sections with respect to the termination of the jurisdiction of the District Court for the Territory of Alaska, the continuation of suits, the succession of courts, and the satisfaction of rights of litigants in suits before such courts, shall not be effective until three years after the effective date of this Act, unless the President, by Executive order, shall sooner proclaim that the United States District Court for the District of Alaska, established in accordance with the provisions of this Act, is prepared to assume the functions imposed upon it. During such period of three years or until such Executive order is issued, the United States District Court for the Territory of Alaska shall continue to function as heretofore. The tenure of the judges, the United States attorneys, marshals, and other officers of the United States District Court for the Territory of Alaska shall terminate at such time as that court shall cease to function as provided in this section.

SEC. 19. The first paragraph of section 2 of the Federal Reserve Act (38 Stat. 251) is amended by striking out the last sentence thereof and inserting in lieu of such sentence the following: "When the State of Alaska is hereafter admitted to the Union the Federal Reserve districts shall be readjusted by the Board of Governors of the Federal Reserve System in such manner as to include such State. Every national bank in any State shall, upon commencing business or within ninety days after admission into the Union of the State in which it is located, become a member bank of the Federal Reserve System by subscribing and paying for stock in the Federal Reserve

bank of its district in accordance with the provisions of this Act and shall thereupon be an insured bank under the Federal Deposit Insurance Act, and failure to do so shall subject such bank to the penalty provided by the sixth paragraph of this section."

SEC. 20. Section 2 of the Act of October 20, 1914 (38 Stat. 742; 48 U.S.C., sec. 433), is hereby repealed.

SEC. 21. Nothing contained in this Act shall operate to confer United States nationality, nor to terminate nationality heretofore lawfully acquired, nor restore nationality heretofore lost under any law of the United States or under any treaty to which the United States may have been a party.

SEC. 22. Section 101 (a) (36) of the Immigration and Nationality Act (66 Stat. 170, 8 U.S.C., sec. 1101 (a) (36)) is amended by deleting the word "Alaska,".

SEC. 23. The first sentence of section 212 (d) (7) of the Immigration and Nationality Act (66 Stat. 188, 8 U.S.C., sec. 1182 (d) (7)) is amended by deleting the word "Alaska,".

SEC. 24. Nothing contained in this Act shall be held to repeal, amend, or modify the provisions of section 304 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C., sec. 1404).

SEC. 25. The first sentence of section 310 (a) of the Immigration and Nationality Act (66 Stat. 239, 8 U.S.C., sec. 1421 (a)) is amended by deleting the words "District Courts of the United States for the Territories of Hawaii and Alaska" and substituting therefor the words "District Court of the United States for the Territory of Hawaii".

SEC. 26. Section 344 (d) of the Immigration and Natoinality Act (66 Stat. 265, 8 U.S.C., sec. 1455 (d)) is amended by deleting the words "in Alaska and".

SEC. 27. (a) The third proviso in section 27 of the Merchant Marine Act, 1920, as amended (46 U.S.C., sec.

883), is further amended by striking out the word "excluding" and inserting in lieu thereof the word "including".

(b) Nothing contained in this or any other Act shall be construed as depriving the Federal Maritime Board of the exclusive jurisdiction heretofore conferred on it over common carriers engaged in transportation by water between any port in the State of Alaska and other ports in the United States, its Territories or possessions, or as conferring upon the Interstate Commerce Commission jurisdiction over transportation by water between any such ports.

SEC. 28. (a) The last sentence of section 9 of the Act entitled "An Act to provide for the leasing of coal lands in the Territory of Alaska, and for other purposes", approved October 20, 1914 (48 U.S.C. 439), is hereby amended to read as follows: "All net profits from operation of Government mines, and all bonuses, royalties, and rentals under leases as herein provided and all other payments received under this Act shall be distributed as follows as soon as practicable after December 31 and June 30 of each year: (1) 90 per centum thereof shall be paid by the Secretary of the Treasury to the State of Alaska for disposition by the legislature thereof; and (2) 10 per centum shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts."

(b) Section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920, as amended (30 U.S.C. 191), is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ", and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof".

SEC. 29. If any provision of this Act, or any section, subsection, sentence, clause, phrase, or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and

of the application of any such provision, section, subsection, sentence, clause, phrase, or individual word to other persons and circumstances shall not be affected thereby.

SEC. 30. All Acts or parts of Acts in conflict with the provisions of this Act, whether passed by the legislature of said Territory or by Congress, are hereby repealed.

Approved July 7, 1958.

30 U.S.C. § 191 (1952)

§ 191. Disposition of moneys received.

All money received from sales, bonuses, royalties, and rentals of public lands under the provisions of sections 181—184, 185—188, 189—194, 201, 202—209, 211—214, 223, 224—226, 226d, 226e, 227—229a, 241, 251, and 261—263 of this title shall be paid into the Treasury of the United States; 37½ per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State or the Territory of Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys to be used by such State, Territory, or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State or Territory may direct; and, excepting those from Alaska, 52½ per centum thereof shall be paid into, reserved and appropriated, as a part of the reclamation fund created by sections 372, 373, 381, 383, 391, 392, 411, 416, 419, 421, 431, 432, 434, 439, 461, 491 and 498 of Title 43: *Provided*, That all moneys which may accrue to the United States under the provisions of sections 181—184, 185—188, 189—194, 201, 202—209, 211—214, 223, 224—226, 226d, 226e, 227—229a, 241, 251, and 261—263 of this title from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by section 524 of Title 34. All moneys received under the provisions of sections

181—184, 185—188, 189—194, 201, 202—209, 211—214, 223, 224—226, 226d, 226e, 227—229a, 241, 251, and 261—263 of this title not otherwise disposed of by this section shall be credited to miscellaneous receipts. Nothing herein contained shall be construed to affect the disposition of proceeds or income derived by the United States from mineral school sections in the Territory of Alaska as provided for in section 353 of Title 48. (Feb. 25, 1920, ch. 85, § 35, 41 Stat. 450; May 27, 1947, ch. 83, 61 Stat. 119; Aug. 3, 1950, ch. 527, 64 Stat. 402.)

Public Law 85-88

AN ACT

Relating to moneys received from mineral lands in Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the last sentence of section 9 of the Act entitled "An Act to provide for the leasing of coal lands in the Territory of Alaska, and for other purposes", approved October 20, 1914 (48 U.S.C. 439), is hereby amended to read as follows: "All net profits from operation of Government mines, and all bonuses, royalties, and rentals under leases as herein provided and all other payments received under this Act shall be distributed as follows as soon as practicable after December 31 and June 30 of each year: (1) 90 per centum thereof shall be paid by the Secretary of the Treasury to the Territory of Alaska for disposition by the legislature of the Territory of Alaska; and (2) 10 per centum shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts."

SEC. 2. Section 35 of the Act entitled "An Act to promote the mining of coal, phosphate oil, oil shale, gas, and

sodium on the public domain", approved February 25, 1920, as amended (30 U. S. C. 191), is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ", and of those from Alaska 52½ per centum thereof shall be paid to the Territory of Alaska for disposition by the Legislature of the Territory of Alaska".

Approved July 10, 1957.

30 U.S.C. § 191 (1994)

§ 191. Disposition of moneys received

(a) All money received from sales, bonuses, royalties including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982 [30 U.S.C. 1701 et seq.], and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.], shall be paid into the Treasury of the United States; and, subject to the provisions of subsection (b) of this section, 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and it subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public servce; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature

thereof: *Provided,* That all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by section 7433(b) of title 10. All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.

(b)(1) In calculating the amount to be paid to States during any fiscal year under this section or under any other provision of law requiring payment to a State of any revenues derived from the leasing of any onshore lands or interest in land owned by the United States for the production of the same types of minerals leasable under this chapter or of geothermal steam, 50 percent of the portion of the enacted appropriation of the Department of the Interior and any other agency during the preceding fiscal year allocable to the administration of all laws providing for the leasing of any onshore lands or interest in land owned by the United States for the production of the same types of minerals leasable under this chapter or of

geothermal steam, and to enforcement of such laws, shall be deducted from the receipts derived under those laws in approximately equal amounts each month (subject to paragraph (4)) prior to the division and distribution of such receipts between the States and the United States.

(2) The proportion of the deduction provided in paragraph (1) allocable to each State shall be determined by dividing the monies disbursed to the State during the preceding fiscal year derived from onshore mineral leasing referred to in paragraph (1) in that State by the total money disbursed to States during the preceding fiscal year from such onshore mineral leasing in all States.

(3) In the event the deduction apportioned to any State under this subsection exceeds 50 percent of the Secretary of the Interior's estimate of the amounts attributable to onshore mineral leasing referred to in paragraph (1) within that State during the preceding fiscal year, the deduction from receipts received from leases in that State shall be limited to such estimated amounts and the total amount to be deducted from such onshore mineral leasing receipts shall be reduced accordingly.

(4) If the amount otherwise deductible under this subsection in any month from the portion of receipts to be distributed to a State exceeds the amount payable to the State during that month, any amount exceeding the amount payable shall be carried forward and deducted from amounts payable to the State in subsequent months. If any amount remains to be carried forward at the end of the fiscal year, such amount shall not be deducted from any disbursements in any subsequent fiscal year.

(5) All deductions to be made pursuant to this subsection shall be made in full during the fiscal year in which such deductions were incurred.

(Feb. 25, 1920, ch. 85, § 35, 41 Stat. 450; May 27, 1947, ch. 83, 61 Stat. 119; Aug. 3, 1950, ch. 527, 64 Stat. 402;

July 10, 1957, Pub. L. No. 85-88, § 2, 71 Stat. 282; July 7, 1958, Pub. L. 85-508, §§ 6(k), 28(b), 72 Stat. 343, 351; Apr. 21, 1976, Pub. L. 94-273, § 6(2), 90 Stat. 377; Aug. 4, 1976, Pub. L. 94-377, § 9, 90 Stat. 1089; Sept. 28, 1976, Pub. L. 94-422, title III, § 301, 90 Stat. 1323; Oct. 21, 1976, Pub. L. 94-579, title III, § 317(a), 90 Stat. 2770; Jan. 12, 1983, Pub. L. 97-451, title I, §§ 104(a), 111(g), 96 Stat. 2451, 2456; Dec. 22, 1987, Pub. L. 100-203, title V, § 5109, 101 Stat. 1330-261; Sept. 22, 1988, Pub. L. 100-443, § 5(b), 102 Stat. 1768; Aug. 10, 1993, Pub. L. 103-66, title X, § 10201, 107 Stat. 407.)

APPENDIX F

[DOI Logo]

DEPARTMENT OF THE INTERIOR
INFORMATION SERVICE

For Release to AM's, AUGUST 24, 1958

ADDRESS BY SECRETARY OF THE INTERIOR FRED A. SEATON AT THE DEDICATION OF WICKERSHAM MONUMENT, FAIRBANKS, ALASKA, AUGUST 23, 1958

You do me great honor to invite me here today to participate in the dedication of this monument to the Honorable James Wickersham, a man who nearly a half century ago played an enormous part in blazing the trail which would one day lead to Alaska's admission to the Union as a State.

He was a man who belongs in the company of the great Americans of all time. In 1909, when he was elected Alaskan Delegate to Congress, Judge Wickersham launched a personal campaign for a full Territorial government for Alaska.

In 1912, largely because of his persistent "lobbying" (as he called it) in the Nation's Capitol, the Congress approved a new organic act which permitted Alaska to become an organized territory, authorized a Territorial Legislature, and substantially increased Alaska's self-government.

Five years later, in the Sixty-third Congress, he proposed—and got passed—a bill to establish a University in Fairbanks. Later he personally laid the University's cornerstone.

Important as these achievements were, it seems to me the date which should be uppermost in all our minds as we meet here today is March 30, 1916, the day when Judge Wickersham introduced in the Congress of the

United States H. R. 13978, the first Alaskan statehood bill. On that day Alaska had been part of the United States of America for exactly 49 years.

The battle for statehood in the intervening years has been long and hard. You and I know that. And all of you know where Alaska stands today, with the passage of the Statehood Bill now a matter of history. The referendum of next Tuesday, August 26, now looms before you, offering to each of you who can vote a privilege which no American citizen has had since the year 1912: the opportunity to answer just one question: "Do you want statehood for Alaska now?"

An affirmative answer requires a "yes" on each one of three propositions which will be put to you. A vote against any one is a vote against statehood.

The first proposition requires no explanation. It puts the question directly: "Shall Alaska immediately be admitted into the Union as a State?"

The second proposition, in brief, poses this question: "Do you accept the boundaries of the present Territory as those of the new State?" This question has been traditionally included when other territories have sought statehood. Its purpose is to forestall future conflicts over boundaries.

In the third proposition, the key question is this: "Do you approve granting the President power, if necessary, to make special national defense withdrawals within the State?" This power to be granted to the President is no greater than that already freely given in twenty-five States. It is essential to the national defense. And it provides for the continuance of state law and for the right of the individual within any area which may possibly be withdrawn.

Now, of course, as a Nebraskan I have no right to attempt to tell you how to vote. The referendum next Tuesday is an Alaska referendum and I, for one, am content to

abide by your decision. You know I have supported Alaskan statehood since 1952, when I was a member of the United States Senate, both because I believed you wanted it and because of my abiding faith that statehood for any territory is a precious possession beyond price. I have consistently advocated it in Washington and in Alaska. For example, on my last trip to Alaska, in a speech before the Alaska Press Club in Anchorage, I said that in voting for the admission of other States in the past, members of Congress had again and again ranged themselves on the side of the future. And as I spoke, the Members of the 85th Congress were making ready to do just that once more—to demonstrate that they were not content with *status quo* but that they were willing to stand up and be counted for the cause of this country's progress.

No one has the power to look beyond the veil of tomorrow, although men often try. But from the evidence of yesterday, and even more from the evidence of today, I for one am ready to hazard the opinion that the future of Alaska is brilliant with promise. For more than six years, since my tenure in office in the United States Senate, I have watched this evidence grow, and never has it seemed more impressive than it does at this very moment.

In company with many other people who have fought for Alaskan statehood, I have watched the Territory's population mount in one of the biggest surges since the days of the Yukon gold rush in the 1890's—mount from 75 thousand in 1940 to 137 thousand in 1950, to 191 thousand in 1952, to 206 thousand in 1956, and to an estimated 220 thousand today—an increase which has brought Alaska, in numbers, ahead of twenty-seven American States at the time of their admission to the Union.

Like many other believers in Alaskan statehood, I remember what has happened to the population figures in other States after their admission to the Union. In ten years after admission, the population of Idaho nearly

doubled, the population of Kansas nearly tripled; the population of California quadrupled.

Remembering this history, I cannot believe other than that statehood for Alaska will mean more people for Alaska—more even than have already come into the Territory. And people—in all walks of life—are one of the area's principal needs, as you know better than I.

There is further evidence that their number will continue to surge upward. In the weeks following the passage of the Alaskan Statehood Bill, just one office of the Department of the Interior—The Office of Territories—has received literally more than two thousand inquiries about Alaska and about the opportunities it offers. Another office, the Bureau of Land Management, has been answering inquiries at the rate of three to five thousand a week. In the first two weeks after the Bill's enactment, the Bureau sent out, in response to requests, almost nine thousand copies of a booklet on Alaska's public lands and resources.

All these inquiries indicate something else for Alaska. They indicate more dollars—dollars of much needed capital investment in the wealth of natural resources with which the Territory abounds. In Fiscal 1957 the production from Alaska's natural resources—fish, timber, minerals, furs—had a value of nearly $162 million. With statehood a fact, I for one expect to see that figure go right through the ceiling in the decade before us.

For one thing, the Statehood Act over a 25-year period will grant the new State control over approximately 103 million acres of land now under Federal ownership; outside these 103 million acres, the State gets 90 percent of all bonuses, royalties, and rentals from mineral leasing on Federal lands. That, alone, will encourage investors, most of whom naturally prefer doing business under State rather than Federal authority.

The big news right now concerning Alaska's natural resources, of course, is oil. On June 30, 1957 there were

under lease or subject to pending application about six and one-half million acres of Alaskan land. In the following 10 months, the Bureau of Land Management received offers which bring the total to more than 39 million acres —a figure well over half the total amount now under lease in the 48 States, including the oil-rich Outer Continental Shelf. As a result of this leasing, Alaska this year has had the greatest land boom in the history of the United States. Twenty-five oil companies have already invested about $30 million in exploration and development. The Geological Survey estimates that in the years immediately ahead, this figure will be multiplied 10 times.

Since July of 1957, when oil was discovered on the Kenai Peninsula, the Territory's share of oil lease revenues has exceeded $10 thousand per day. Since early this year the Territory has received 90 percent of all oil lease revenues; the State of Alaska will continue to do so. These revenues, which by all odds should increase, should easily offset the additional costs of State government.

Oil and gas development in Alaska will be spurred on by the modification of PLO-82 which Governor Stepovich recommended and which I ordered. This permits leasing on 20 million acres north of the Arctic Circle—a modification responsible for one of the largest single additions to mineral leasing lands in American history.

It will be spurred on by the Geological Survey's intensified geological mapping program designed for the next decade.

It will be spurred on by the opening of part of the Kenai Moose Range—an administrative action which, while giving full protection to wildlife, permits exploration and drilling in more than fifteen hundred square miles of the Peninsula.

And Alaska's oil and gas development may well be spurred on by two most dramatic events of the past few

weeks: the cruises of the *Nautilus* and the *Skate* under the polar ice cap, among other things, which brought home to people around the world the breathtaking possibility that Alaskan oil could be "shipped" by nuclear undersea tanker to ports of Europe—ports which by that northern route are closer to Point Barrow than to Saudi Arabia or Iraq or Kuwait.

To an oil-thirsty world the news of Alaska's oil reserves is exciting indeed. Surely it is great news in the United States, with its increasingly ravenous demands on natural resources. In fact the same thing is true of Alaska's reserve strength in timber, coal, iron ore, and other minerals, and hydroelectric power.

With seven percent of the world's population, the United States uses one-half the world's annual oil production; one-third of the world's annual production of iron ore, copper, and tin; one-fifth or more of the world's annual coal output. All these resources Alaska has, some of them in great abundance.

Last year Alaska produced coil in the volume of 840 thousand tons. With its deposits of bituminous, subbituminous, lignite and anthracite, it has reserves which the Geological Survey estimates at 100 billion tons.

In the Klukwan iron ore deposit, Alaska has about one-half billion tons averaging 25 percent iron. For a number of years the Bureau of Mines of the Department of the Interior has been studying means of beneficiating and smelting Klukwan magnetite ores and one day, as a result of continuing research, this largely untapped supply may be of considerable value to the United States.

The only known commercially feasible tin deposit in the United States is in Alaska, at Lost River on the Seward Peninsula. In fact, 31 of the 33 metals and minerals which the United States Government records on its "strategic" or "critical" lists are known to be in Alaska.

If the time ever comes when our foreign sources of supply should be cut off or endangered, the Alaskan deposits may well turn out to be literal lifesavers for America.

The economy of the Seward Peninsula might be changed overnight by the Atomic Energy Commission's Operation Plowshare, a project for blasting a new harbor in northwest Alaska. If this project, now under study, should turn out to be feasible and desirable, it could result in a new means of getting out of the area its now largely untapped mineral reserves.

In looking forward to the future development of Alaska there's something else you should not forget: the Territory's "growing" highway program. Under the administration-sponsored Federal-aid Highway Act of 1956, Alaska has received apportionments for Fiscal Years 1957-60 totaling nearly $50 million. Roads mean easier access to natural resources. And they also mean tourists. Here again I believe there's every justification for sensible optimism.

This year, for example, the new Denali Highway should be completed. For the first tme, it will enable people to drive their cars to Mt. McKinley National Park.

The Alaska Visitor Association estimates income from tourism in 1951 was about $12 million; in 1955, $18 million—50 percent higher; and in 1957, $29 million—nearly 150 percent higher.

With the coming of statehood I believe you can look forward to seeing more and more people crossing your borders, by automobile, by airplane, by ship. And I believe this: more and more of these people will be settlers —people confident of the future of the 49th State and interested in making it their home.

They will come attracted by the region's vast natural resources—oil and natural gas, timber and iron ore. They will come attracted by its hydroelectric potential, equal to

80 percent of the existing capacity in Washington, Oregon, and California combined. They will come because of its beauty and its rugged grandeur, and above everything else—because of the hearty hospitality and the room it offers to those who are willing to work for a living.

Economic opportunities, however, will not alone bring all these people. These new citizens of Alaska will come here also, I firmly believe, because they know that their new neighbors are willing to depend on the future rather than lean on the past, are ready to seize tomorrow by the handle of confidence.

In the years ahead, I personally have every conviction that the people of Alaska will prove themselves worthy of such pioneer forebearers as James Wickersham, thunderously demonstrating again and again their eagerness to drive forward toward the boundless opportunities which their beloved land offers to them and all deserving comers.

[DOI Logo]

DEPARTMENT OF THE INTERIOR
INFORMATION SERVICE

For Release to AM's, AUGUST 26, 1958

ADDRESS BY SECRETARY OF THE INTERIOR FRED A. SEATON AT THE CHAMBER OF COMMERCE, ANCHORAGE, ALASKA, AUGUST 25, 1958

It is a pleasure to be here at this heretofore unparalleled moment in the history of Alaska. On Tuesday, August 26, you and your fellow Alaskans throughout the Territory will have a privilege which no American citizens have had since 1912, the year New Mexico and Arizona entered the Union—the opportunity to vote for your Territory's immediate entry into statehood, the opportunity to confer upon yourselves the full rights and privileges of American citizenship.

Under the American system, it is your inalienable right as Alaskans to decide for yourselves how to vote. Let me make this crystal clear: I am not here, by any stretch of the imagination, in an attempt to dictate to you one way or the other. Because the Department of the Interior worked with the President, the Alaska Statehood Commission, and many others in successfully piloting the Alaska statehood bill through the Congress I want to discharge a related obligation: that is, to make clear the effect of the Enabling Act and the propositions upon which you will vote next Tuesday.

My main purpose in speaking to you this evening is to clear up some misunderstandings which I understand exist about the nature of the referendum propositions and about the effects of statehood. Many of these misunderstandings concern the future operations of the Federal Government in Alaska.

In the referendum Alaska citizens will vote on three propositions. These simply add up to one plain question:

"Do you want statehood now?" If you vote against any one of them, you have, in fact, voted against statehood. Under the terms of the Alaskan Statehood Act, as passed by the Congress of the United States, all three must pass if the Territory is to become a State.

The first proposition is a question, "Shall Alaska immediately be admitted into the Union as a State?" I am told it was included in the bill in order that the issue implied in the other two propositions would be clearly recognized by everyone. By voting separately for it, Alaskans will indelibly record their position on immediate statehood. A "yes" vote on the first proposition is a vote of confidence in the future of Alaska. More than that it means you, as American citizens, want all the rights and privileges of an American citizen now. If you do not want those rights and privileges, that is your business.

This is the second proposition: "The boundaries of the State of Alaska shall be as prescribed in the Act of Congress approved July 7, 1958 and all claims of this State to any areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States." A "yes" on this proposition means just one thing: the voter accepts the present boundaries of the Territory as those of the new State and approves the principle that waters within three miles of the shoreline will be under the State's jurisdiction.

There is neither anything novel or complex about this provision. It is traditionally characteristic of statehood acts. Its purpose is to define once and for all the boundaries of the new State and to prevent conflicts later on over these boundaries and the State's land allotment. This formality infringes on Alaskans' rights no more than similar formalities in the past have infringed on the rights of citizens of other States. In other words, it infringes on these rights not at all.

Now let's turn to proposition three: "All provisions of the Act of Congress approved July 7, 1958, reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people."

A "yes" on this one means principally two things. It means that the voter approves of granting the President power to create special withdrawals, mainly in northern and western Alaska, in the interest of national defense.

This Presidential power is no greater than that already freely given in 25 of the 48 States. Federal jurisdiction over withdrawn areas would be subject to the laws of the State of Alaska. The Act provides ample protection for the rights of the citizens within any area which may be withdrawn in the future.

A "yes" on proposition three also means, that the voter approves of the State's selecting from federally owned public lands approximately 103 million acres over a 25 year period. This is the most generous amount of land ever given to a State before admission into the Union.

There, in brief, are the three propositions. Not one is complicated. Not one is unique to Alaska, except for the generosity of the Federal land grant to the new State. Not one curtails any of the rights and privileges which Alaskans now have.

Unfortunately, word has somehow got around that there is more to them than meets the eye, that they have a sinister purpose, one which will bring down on Alaskans all sorts of mysterious evils.

Now, I realize there are Alaskans who have sincerely opposed Alaska's admission into the Union. No matter how much we may disagree with them, every one of us, I believe, should be prepared to defend their right to express themselves openly and in the voting booth on this major

public question. That is a right fundamental to the American system.

Speaking out frinkly on the basis of conscience and the facts is one thing. But setting out deliberately to confuse and frighten other people is an entirely different thing.

For example, I must confess I was shocked when Governor Seepovich wrote to me that certain members of the Alaska Native Brotherhood had been told that the Statehood Act would compel the Federal Government to put all Alaskan natives on reservations. That rumor is absolutely not true. It has not one splinter of evidence to support it. It is designed to frighten the fine descendants of the original occupants of Alaska—Eskimo, Aleut, and Indians, all our fellow citizens—to make them think a vote for statehood is a vote for their persecution and confinement.

Let's get this straight: the natives of Alaska, as any other American citizens have a right to keep their lands. They have a right to their freedom. They have a right to have their property protected by the Government. And we have a solemn obligation to protect those rights. Alaskan statehood can only serve to further protect and strengthen their rights.

There's another story current—that under the Statehood Act the trapping and hunting areas used by natives will be severely limited. True or false? It is absolutely false. The next time you hear this one, ask for the proof of it. There isn't any. Under statehood the natives can stay where they are. They can use the same lands they have been using. Nobody's going to take that right away from them.

Here's another one: under statehood the native hospitals in Alaska will be closed. True or false? False again. Statehood has nothing to do with the Federal Government's responsibilities to the natives of Alaska. And I can

assure you that we have no intention of abandoning those responsibilities in Alaska any more than we have of abandoning them in Indian localities in the 48 now existing States.

And let me add this: despite what the enemies of statehood say, we have no intention, under statehood, of shutting down the Alaska Railroad either. We know how important it is to the military establishment as well as to the civilian economy in Alaska. The United States now has a net investment in this railroad of more than $132 million. As the State of Alaska grows, this railroad will become more useful, more needed; not less. And I personally hope that it someday will be more fully joined with other systems of surface transportation to assure an adequate land access to the other States and to our great neighbor nation, Canada.

Not content with trying to poison the thinking of Alaska's natives and the users of the Alaska Railroad, the "Territory forever" people have set out to try to scare Alaska's Federal employees. "If you vote for statehood", the line goes, "you may lose your cost-of-living differential and your overseas pay."

Well, I've been in Washington more than five years now, and I hope I've learned at least something about the fine men and women who work for the Federal Government as career employees. I do know this about them; by and large they are as intelligent and dedicated a group of men and women as I ever hope to meet; and by and large they don't scare easily.

Hearing rumors like this one, most of them, I believe, will try to get the facts. And the key fact is this, given by the Chairman of the Civil Service Commission, Harris Ellsworth: the law provides cost of living differentials for service in "Alaska"; not Alaska the Territory or Alaska the State, but just Alaska. The Bureau of the Budget has

already advised every Executive Department and Agency that the cost-of-living and overseas payments would be continued under statehood.

There seems to be a full Pandora's Box of scare stories: that with statehood the Alaska branch of the Bureau of Public Roads will shut up shop and go home; that fires will rage unchecked on public lands because the Forest Service and the Bureau of Land Management will have fled from the scene; that agricultural experimentation on Alaskan soil will cease; that children now in public schools on military bases will have to grow up in ignorance because those schools will shut down. To all of these, I say this: if anyone really believes any of these things, he need only pick up a newspaper or magazine or take a trip to any one of the 48 American States to have his eyes opened and to be reassured that, yes, there is still an America, with a Federal road program and agricultural experimentation and schools on military bases—all flourishing as never before in history in areas which have not been territories for a 100 years.

I know the people of Alaska won't be fooled. You can feel sorry for those who cannot face facts; but you don't have to listen to them much less believe them. The facts before you are eloquent.

First: the land grants in the new Statehood Act far exceed any ever made in any previous Statehood Act. In fact, opponents of statehood in Congress tried to label the bill as a fantastic "giveaway"; no other State, they argued has received land grants, including full mineral rights, in the quantity given to Alaska. Other States received in place grants—certain sections of each township for school or other public purposes. Alaska, however, has the right to choose over 103 million acres from the public domain. In addition, Alaska has been granted complete title to her submerged lands.

A second fact: the Act reaffirms Alaska's preferential treatment in receiving 90 percent of all revenues from oil, gas, and coal leasing on the public domain. During the first six months after this allocation to Alaska went into effect, Alaska's share of oil and gas lease revenues exceeded $1,800,000—approximately $10,000 per day.

A third fact: according to an analysis prepared in the Department of the Interior, the additional costs of State Government will be more than offset by additional revenues made available to Alaska. This fact should be made plain to everyone. You have known what it is to support a Territorial government with nearly all the functions of a State while Washington held fast in its grip most of the Territory's governmental power, as well as most of its revenue.

The three propositions are before you. All of us who are not privileged to enter the polling places with you next Tuesday do have the right to ask one thing, and one thing only: that you assemble the facts and base your decision on them. Cast rumor aside as unworthy of those who spread it and a snare and a delusion for sincere and honest people in the very moment of one of the greatest decisions of their lives.

Above everything else, vote. Vote as your own conscience and judgment dictate, but vote!

FILED
JAN 5 1998
CLERK

No. 97-750

In the Supreme Court of the United States

OCTOBER TERM, 1997

STATE OF ALASKA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

SETH P. WAXMAN
Solicitor General

LOIS J. SCHIFFER
Assistant Attorney General

ROBERT L. KLARQUIST
BRUCE M. LANDON
MARGARET W. SWEENEY
ETHAN G. SHENKMAN
Attorneys

Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

30 pp

QUESTIONS PRESENTED

1. Whether Section 28(b) of the Alaska Statehood Act constitutes a contractual promise by Congress that the State of Alaska shall have an irrevocable right to receive in perpetuity 90 percent of gross proceeds derived from mineral leasing on public lands in Alaska.

2. Whether Section 28(b) of the Alaska Statehood Act constitutes a contractual promise by Congress that the United States shall assume an affirmative duty to exploit public lands in Alaska for mineral development in order to generate royalty revenues for the State.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	11
Conclusion	24

TABLE OF AUTHORITIES

Cases:

Alaska Lumber & Pulp Co. v. *Madigan*, 2 F.3d 389 (Fed. Cir. 1993)	12
Andrus v. *Charlestone Stone Prods. Co.*, 436 U.S. 604 (1978)	15
Andrus v. *Utah*, 446 U.S. 500 (1980)	4, 21, 22
Beecher v. *Wetherby*, 95 U.S. 517 (1877)	15
Burglin v. *Morton*, 527 F.2d 486 (9th Cir. 1975), cert. denied, 425 U.S. 973 (1976)	12
Conway v. *California Adult Auth.*, 396 U.S. 107 (1969)	11
Duesing v. *Udall*, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966)	12
Federal Land Bank of Houston v. *United States*, 168 F. Supp. 788 (Ct. Cl. 1958)	15
Gibson v. *Chouteau*, 80 U.S. (13 Wall.) 92 (1872)	15
Haley v. *Seaton*, 281 F.2d 620 (D.C. Cir. 1960)	12
McAbee Construction, Inc. v. *United States*, 97 F.3d 1431 (Fed. Cir. 1996)	12
McMahon v. *United States*, 342 U.S. 25 (1951)	11
Metlakatla Indian Community v. *Egan*, 369 U.S. 45 (1962)	21
Organized Village of Kake v. *Egan*, 369 U.S. 60 (1962)	21
Rice v. *Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70 (1955)	11
Udall v. *Tallman*, 380 U.S. 1 (1965)	2, 12

Cases—Continued: Page

United States v. *Alaska*, 117 S. Ct. 1888 (1997) 21
United States v. *Atlantic Richfield Co.*, 435 F. Supp. 1009 (D. Alaska 1977), aff'd, 612 F.2d 1132 (9th Cir.), cert. denied, 449 U.S. 888 (1980) 8
United States v. *Sweet*, 245 U.S. 563 (1918) 15
United States ex rel. McLennan v. *Wilbur*, 283 U.S. 414 (1931) 12
Watt v. *Alaska*, 451 U.S. 259 (1981) 13, 14

Constitution and statutes:

U.S. Const. Art. IV, § 3, Cl. 2 15
Act of Feb. 25, 1920, ch. 85, § 35, 41 Stat. 450-451 2
Act of May 27, 1947, ch. 83, 61 Stat. 119 2
Act of July 10, 1957, Pub. L. No. 85-88, 71 Stat. 282 ..... 3, 7, 19, 20, 21, 24
Alaska Coal Lands Act, ch. 330, 38 Stat. 741 (1914) . 6, 7
Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, 94 Stat. 2371 (1980) 9
Alaska Statehood Act, Pub. L. No. 95-508, 72 Stat. 339 (codified at 48 U.S.C. Ch. 2) 3
§ 4, 72 Stat. 339 ..... 4, 5, 21, 23
§ 5, 72 Stat. 340 ..... 4, 5, 22
§ 6, 72 Stat. 340 ..... 4, 5, 22
§ 6(a), 72 Stat. 340 5
§ 6(b), 72 Stat. 340 5
§ 6(e), 72 Stat. 341 5
§ 6(f), 72 Stat. 341 5
§ 6(i), 72 Stat. 342 5
§ 8, 72 Stat. 343 ..... 4, 5, 22
§ 8(b), 72 Stat. 344 ..... 6, 22, 23
§ 8(c), 72 Stat. 344 6
§§ 12-18, 72 Stat. 348-350 6
§§ 12-28, 72 Stat. 348-351 6
§ 19, 72 Stat. 350 6
§§ 19-28, 72 Stat. 350-351 6

Statutes—Continued: Page

§§ 21-26, 72 Stat. 351 6
§ 27, 72 Stat. 351 6
§ 28, 72 Stat. 351 ..... 4, 6
§ 28(a), 72 Stat. 351 7
§ 28(b), 72 Stat. 351 ..... *passim*
Department of the Interior and Related Agencies Appropriations Act, 1991, Pub. L. No. 101-512, 104 Stat. 1926 (1990) 8
Department of the Interior and Related Agencies Appropriations Act, 1992, Pub. L. No. 102-154, 105 Stat. 1001 (1991) 8
Department of the Interior and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-381, 106 Stat. 1385 (1992) 8
Federal Reserve Act, 12 U.S.C. 221 *et seq.* 6
Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.* 6
Merchant Marine Act, 1920, ch. 250, 41 Stat. 988 6
Mineral Leasing Act, 30 U.S.C. 181 *et seq.* 2
30 U.S.C. 181 2
30 U.S.C. 191 (§ 35) 2, 3, 6, 7, 8, 13, 14
30 U.S.C. 191 note 7
30 U.S.C. 191 (1952) 3
30 U.S.C. 191 (Supp. V 1952 ed.) 6-7, 14
30 U.S.C. 191(b)(1) 9
Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 10201(3), 107 Stat. 407 9
Reclamation Act of 1902, 43 U.S.C. 372 *et seq.* 2
28 U.S.C. 2501 11

Miscellaneous:

Alaska Statehood: Hearings on S. 49 and S. 35 Before the Senate Comm. on Interior and Insular Affairs, 85th Cong., 1st Sess. (1957) .. 16, 18, 19

Miscellaneous—Continued: Page

104 Cong. Rec. (1958):
p. 12,208 17
pp. 12,332-12,333 17
H.R. Rep. No. 624, 85th Cong., 1st Sess. (1957) 20
H.R. Rep. No. 253, 98th Cong., 1st Sess. (1983) 8
S. Rep. No. 1163, 85th Cong., 1st Sess. (1957) 3, 6, 16, 17, 18, 20, 22

In the Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-750

STATE OF ALASKA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The per curiam opinion of the court of appeals (Pet. App. 1a) is unpublished, but the decision is noted at 119 F.3d 16 (Table). The opinion of the Court of Federal Claims (Pet. App. 2a-46a) is reported at 35 Fed. Cl. 685.

JURISDICTION

The judgment of the court of appeals was entered on July 8, 1997. Pet. App. 47a. On September 22, 1997, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including November 5, 1997 (Pet. App. 48a), and the petition was filed on October 31, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Mineral Leasing Act of 1920 (MLA), 30 U.S.C. 181 *et seq.*, grants the Secretary of the Interior broad, discretionary power to issue leases for specified minerals, including oil and gas, on public lands. 30 U.S.C. 181; see *Udall* v. *Tallman*, 380 U.S. 1, 4-5 (1965). When the Secretary decides to open public lands for mineral leasing, Section 35 of the MLA directs the federal government to distribute the majority of the proceeds for the benefit of the States. 30 U.S.C. 191.

As originally enacted, Section 35 provided for 37½ percent of such revenues to be paid to the State in which the leasing occurred (with such funds to be used by the State for support of public roads and education); 52½ percent to be paid into the federal "reclamation fund" for financing irrigation projects under the Reclamation Act of 1902, 43 U.S.C. 372 *et seq.*; and the remaining 10 percent to remain in the United States Treasury, credited as miscellaneous receipts. Act of Feb. 25, 1920, ch. 85, § 35, 41 Stat. 450-451. Under the 1920 version of the Act, the Territory of Alaska was effectively excluded from that revenue-sharing scheme.

In 1947, Congress amended Section 35 of the MLA to bring the Territory of Alaska within the ambit of the 37½ percent share, which had previously been extended only to States. See Act of May 27, 1947, ch. 83, 61 Stat. 119. Because the Territory of Alaska was not eligible for irrigation projects under the Reclamation Act, however, the remaining proceeds derived from mineral leasing in Alaska were simply credited to the United States Treasury as miscel-

laneous receipts. See 30 U.S.C. 191 (1952) (Pet. App. 74a-75a).

In the mid-1950s, while Congress was evaluating various proposals for admitting Alaska to the Union, it considered several bills that were intended to address—separate and apart from statehood—the perceived disparity in Alaska's treatment under the MLA vis-à-vis the States that were eligible to receive irrigation projects under the Reclamation Act. In 1957, Congress enacted one of those bills. See Act of July 10, 1957, Pub. L. No. 85-88, 71 Stat. 282 (Public Law 85-88) (Pet. App. 75a-76a).

Public Law 85-88 amended Section 35 of the MLA to increase Alaska's share of MLA proceeds effectively to 90 percent: it granted the territorial legislature an unrestricted 52½ percent share in addition to the 37½ percent share (specifically designated for roads and schools) to which the Territory had already been entitled. The amendment was intended to eliminate the "unfairness" of Alaska's inability to benefit from the 52½ percent share which, in the case of mineral leasing on public lands in the States, was paid into the federal reclamation fund. Pet. App. 15a-16a.

2. In July 1958, Congress passed the Alaska Statehood Act (ASA), Pub. L. No. 85-508, 72 Stat. 339 (codified at 48 U.S.C. Ch. 2), thus paving the way for Alaska's admission into the Union. The Act contained the most generous terms for admission of a new State in the history of the United States. See S. Rep. No. 1163, 85th Cong., 1st Sess. 2 (1957) (C.A. App. A224). Most significantly, it granted the State of Alaska the right to select 103,350,000 acres of land from the public domain. That public land grant was unprecedented, not only for its enormous size (more than 161,000 square miles, an area larger than any

State in the Union except Texas), but also for the absence of traditional restrictions on the State's selection and disposal of such lands and for the express *inclusion* of mineral lands.[1]

The ASA contains 30 sections. The first 11 sections set out the terms and conditions under which Alaska would be admitted into the Union. The majority of the remaining sections addressed various administrative aspects of the transition from territorial status. Sections 4, 5, 6, 8 and 28 are the most pertinent here.

Section 4 of the ASA is the only section that uses the term "compact." It contains a general disclaimer by which Alaska and its people, "[a]s a compact with the United States," *inter alia*:

> forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States.

72 Stat. 339 (Pet. App. 49a-50a). Section 4 further provides that "all such lands or other property[] belonging to the United States * * * shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has

---

[1] In land grant provisions in previous statehood acts, new States were typically limited to specifically designated sections in each township, with the right to select other lands only if the designated sections were unavailable at the time of survey. *Andrus* v. *Utah*, 446 U.S. 500, 506-507 & n.7 (1980). Furthermore, mineral lands were historically excluded from such land grants. *Id.* at 508-509.

prescribed or may hereafter prescribe." *Ibid.* (Pet. App. 50a). Section 5 makes clear that, "[e]xcept as provided in section 6 hereof, the United States shall retain title to all property, real and personal, to which it has title, including public lands." *Id.* at 340 (Pet. App. 50a-51a).

Section 6, *inter alia*, set forth specific grants of land and other property. For example, Section 6(a) and (b) granted Alaska the right to select up to 102,550,000 acres of public lands that are "vacant, unappropriated, and unreserved at the time of their selection" and to select an additional 800,000 acres (including 400,000 acres from national forests) for purposes of community expansion and development. 72 Stat. 340 (Pet. App. 51a-52a). Section 6(i) gave the State the right to select public lands with mineral deposits and required the State to retain title to the mineral rights in perpetuity. *Id.* at 342 (Pet. App. 56a). In addition to grants of land, Section 6 included various revenue-sharing provisions, directing payment to the State, for instance, of 70 percent of net proceeds from the sale of seal and otter skins on the Pribilof Islands (§ 6(e), 72 Stat. 341 (Pet. App. 53a)), and 5 percent of net proceeds from the sale of public lands in Alaska (§ 6(f), 72 Stat. 341 (Pet. App. 53a-54a)).

Section 8 of the ASA called for the holding of a public referendum on three propositions, the third of which is relevant here. Under the third proposition, the voters of Alaska would decide whether they "consented * * * fully" to:

> All provisions of the [ASA] * * * reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the

> grants of lands or other property therein made to the State of Alaska.

§ 8(b), 72 Stat. 344 (Pet. App. 58a-59a). If the voters approved all three propositions, Section 8(c) required the President to issue a proclamation to that effect, and upon such proclamation Alaska would be admitted into the Union. 72 Stat. 344 (Pet. App. 59a). If any one of the above propositions were defeated, however, the ASA would not take effect. § 8(b), 72 Stat. 344 (Pet. App. 59a).

Sections 12 through 28 of the ASA, 72 Stat. 348-351 (Pet. App. 66a-73a), addressed various administrative and technical changes that would have to be made in other laws to facilitate Alaska's transition from a Territory to a State. Sections 12 through 18, for instance, contained numerous amendments to Title 28 of the United States Code that were necessary to bring Alaska within the federal court system. Sections 19 through 28, the Act's "miscellaneous provisions," S. Rep. No. 1163, *supra*, at 28 (C.A. App. A237), amended various other statutes to reflect Alaska's new status as a State. See, *e.g.*, § 19 (amending Federal Reserve Act); §§ 21-26 (Immigration and Nationality Act); § 27 (Merchant Marine Act, 1920), § 28 (Alaska Coal Lands Act and Mineral Leasing Act).

Section 28(b) of the ASA—the basis for Alaska's claims in this case—amended Section 35 of the MLA to reflect Alaska's new status as a State. At the time of the ASA's passage, the pertinent clause in Section 35 of the MLA read as follows: "and of those from Alaska 52½ per centum therof shall be paid to the *Territory* of Alaska for disposition by the legislature of the *Territory* of Alaska." 30 U.S.C. 191 (Supp. V

1952 ed.) (emphasis added).[2] In full, Section 28(b) of the ASA provided:

> Section 35 of the [MLA] is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ", and of those from Alaska 52½ per centum thereof shall be paid to the *State* of Alaska for disposition by the legislature thereof".

72 Stat. 351 (Pet. App. 73a) (emphasis added). Thus, the sum total of Section 28(b)'s revision was to substitute the words "State of Alaska" for "Territory of Alaska" in one clause of Section 35 of the MLA.[3]

On August 26, 1958, the Alaskan people approved all three propositions in the statehood referendum, and on January 3, 1959, President Eisenhower proclaimed Alaska a State. Pet. App. 23a. The date of statehood was also the effective date of Section 28(b)'s amendment to the MLA. See 30 U.S.C. 191 note. As noted above, however, Alaska had been receiving a 90 percent share under the MLA since July 1957, when Congress amended the MLA through Public Law 85-88. Thus, from July 1957 to the present, Alaska's share of MLA proceeds has remained constant at 90 percent.[4]

---

[2] This version of Section 35 includes the July 1957 amendment effected by Public Law 85-88, which raised the Territory of Alaska's total share of MLA proceeds to 90 percent. See page 3, *supra*.

[3] Similarly, Section 28(a) amended one clause in the Alaska Coal Lands Act of 1914 so that it would apply to the "State" rather than the "Territory" of Alaska. 72 Stat. 351 (Pet. App. 73a).

[4] While Alaska's percentage share under the MLA has remained constant, the rate at which the United States has

3. In the early 1990s, Congress enacted several measures affecting the method of calculating the States' respective shares under the MLA. In appropriations legislation for fiscal year 1991, for instance, Congress directed the Secretary of the Interior to deduct a portion of the administrative costs for the MLA program prior to calculating the States' shares under Section 35. See Department of the Interior and Related Agencies Appropriations Act, 1991, Pub. L. No. 101-512, 104 Stat. 1926 (1990). Congress enacted similar provisions in fiscal years 1992 and 1993. See Department of the Interior and Related Agencies Appropriations Act, 1992, Pub. L. No. 102-154, 105 Stat. 1001 (1991); Department of the Interior and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-381, 106 Stat. 1385 (1992).

Those measures were motivated by a long-standing concern that States were not sharing equitably in the costs of administering the federal mineral leasing program. See, *e.g.*, H.R. Rep. No. 253, 98th Cong., 1st Sess. 36-37 (1983) (C.A. App. A787). In 1993, Congress enacted those changes on a permanent basis, amending Section 35 of the MLA so that, from that point forward, 50 percent of the government's administrative costs in running the mineral leasing program

---

made new lands in Alaska available for leasing has declined, at least since 1966. Pet. App. 23a. That reduction is largely a result of the fact that selections by the State and by Alaska Native corporations have removed some of the most productive lands from the public domain. See *United States* v. *Atlantic Richfield Co.*, 435 F. Supp. 1009, 1017-1019 (D. Alaska 1977) (noting that, in 1964 and 1965, Alaska selected 1,650,000 acres on the Arctic Slope, including the immensely valuable oil fields in Prudhoe Bay), aff'd, 612 F.2d 1132 (9th Cir.), cert. denied, 449 U.S. 888 (1980).

would be deducted "prior to the division and distribution of such receipts between the States and the United States." 30 U.S.C. 191(b)(1) (Pet. App. 77a-78a); see Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 10201(3), 107 Stat. 407.

4. In July 1993, Alaska filed the instant action in the United States Court of Federal Claims (CFC). C.A. App. A46-A58 (Complaint). Alaska's claims were premised on the assertion that Section 28(b) was an integral part of a "compact" or "contract" that the United States formed with the people of Alaska upon Alaska's admission into the Union. In particular, Alaska claimed that Section 28(b), construed as a contract provision, contains the following two enforceable promises: (1) that Alaska would be granted an irrevocable right to receive in perpetuity 90 percent of *gross* proceeds earned under the MLA; and (2) that the United States would assume an affirmative duty to undertake mineral leasing on public lands in order to generate sufficient royalties for the State. See Pet. App. 27a.

In Counts 1 to 3, Alaska asserted that the United States "breached" the second of those alleged promises "by repeatedly withdrawing more than one-hundred million (100,000,000) acres of federal land from mineral leasing within Alaska, thereby precluding generation of revenues for Alaska." Complaint ¶ 20 (C.A. App. A52).[5] Alaska claimed that it

---

[5] According to Alaska, Congress committed that breach when it enacted the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. No. 96-487, 94 Stat. 2371 (1980), which withdrew from potential mineral location and development various wild and scenic rivers, national parks, and wilderness preserves, and withdrew from future mineral leasing, among other areas, the Yukon-Charlie Rivers National

was entitled to money damages "[t]o the extent the withdrawn lands would have generated mineral revenues had they been open to leasing." *Id.* ¶ 22 (C.A. App. A52). In the alternative, Alaska asserted in Count 4 that the withdrawal of land from mineral development had "'taken' Alaska's interest in the revenue to be derived from those lands in violation of the Fifth Amendment." *Id.* ¶ 34 (C.A. App. A55). In Count 5 of its complaint, Alaska alleged that Congress had breached the first of the alleged promises by enacting legislation authorizing the deduction of administrative expenses before calculating MLA revenue shares to the States. Alaska sought approximately $1.7 million in damages for that breach, representing the total amount of such deductions as of June 1993. *Id.* ¶¶ 38-43 (C.A. App. A55-A57).

5. The United States moved for summary judgment, and the CFC granted summary judgment for the United States on all five counts. Pet. App. 2a-46a. For purposes of its analysis, the CFC was willing to indulge, *arguendo*, Alaska's assertion that Section 28(b) should be construed under principles that govern contract interpretation. *Id.* at 34a ("In the final analysis, * * * it is unnecessary to decide with exactitude whether Section 28(b) should be construed as a binding contract or as mere legislation. The court is prepared to assume, along with the State, that Section 28(b) is a contractually enforceable provision of the Statehood Act."). The "real question," the CFC believed, is "what does Section 28(b) mean?"

Preserve and 1.5 million acres of land that were added to the Arctic National Wildlife Refuge. Alaska alleged that all of those areas had significant potential for mineral development. Complaint ¶ 21 (C.A. App. A52).

Ibid. After careful evaluation, the Court found no basis for construing Section 28(b) to contain the promises that Alaska asserted. *Id.* at 34a-45a.[6]

6. The court of appeals affirmed in an unpublished, per curiam opinion "on the basis of the reasoning set forth in the lengthy, detailed, precise and correct opinion of Judge Bruggink." Pet. App. 1a. The court of appeals concluded that, in light of "Judge Bruggink's scholarly opinion," "[n]othing more need be said." *Ibid.*

ARGUMENT

Alaska argues that this Court should grant certiorari to clarify whether Section 28(b) of the ASA should be construed as "ordinary legislation" or as part of a "contract" between the United States and the people of Alaska. Pet. i, 28. As the CFC held, however, there is no need to reach that issue: Even if interpreted as a contract, Section 28(b) cannot reasonably be read to embody the promises that Alaska alleges. This Court ordinarily will not grant certiorari on an "academic" issue that makes no difference to the outcome of the case. *Rice* v. *Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955); see *Conway* v. *California Adult Auth.*, 396 U.S. 107 (1969) (per curiam); cf. *McMahon* v. *United States*, 342 U.S. 25, 28 (1951). Moreover, the CFC's interpretation of Section 28(b) is correct and does not conflict with any decision of this Court or any other court of appeals. Further review by this Court is therefore unwarranted.

---

[6] The CFC did not reach the United States' affirmative defenses based on the "unmistakability" and "sovereign act" doctrines and, with respect to Counts 1 to 4, the six-year statute of limitations in 28 U.S.C. 2501. Pet. App. 45a-46a.

1. Alaska contends that Section 28(b) of the ASA contains two contractually enforceable promises: (1) that Congress would never enact any changes in the MLA that would decrease Alaska's revenue share from where it stood in 1958, *i.e.*, 90 percent of *gross* proceeds; and (2) that the United States, in a radical departure from the state-federal revenue sharing scheme under the MLA, would assume an affirmative duty to exploit public lands in Alaska for oil and gas development in order to generate royalties for the State.[7] Alaska's contentions cannot be reconciled with the plain language of Section 28(b) or its legislative history, regardless of whether that Section is read as a statute or as a contract.

a. The meaning of Section 28(b) is governed by its plain language, whether it is read as a statute or as a contract. See *McAbee Construction, Inc.* v. *United States*, 97 F.3d 1431, 1435 (Fed. Cir. 1996) ("[I]f the [contract] 'provisions are clear and unambiguous, they must be given their plain and ordinary meaning,' * * * and the court may not resort to extrinsic evidence to interpret them.") (citing *Alaska Lumber & Pulp Co.* v. *Madigan*, 2 F.3d 389, 392 (Fed. Cir. 1993)).

---

[7] The courts have uniformly held that the MLA does not contain "a positive mandate to lease." *Haley* v. *Seaton*, 281 F.2d 620, 625 (D.C. Cir. 1960); accord *Duesing* v. *Udall*, 350 F.2d 748, 750-751 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966); *Burglin* v. *Morton*, 527 F.2d 486, 488-489 (9th Cir. 1975), cert. denied, 425 U.S. 973 (1976). See also *Udall* v. *Tallman*, 380 U.S. 1, 4 (1965) (MLA leaves "the Secretary discretion to refuse to issue any lease at all on a given tract") (citing *United States ex rel. McLennan* v. *Wilbur*, 283 U.S. 414 (1931)).

The plain language of Section 28(b) is clear, unambiguous, and utterly inconsistent with Alaska's claims. It states as follows:

> Section 35 of the [MLA] is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ", and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof".

72 Stat. 351 (Pet. App. 73a). On its face, Section 28(b) does not purport to make any "promise" or "offer" to the Alaskan people. Even if it were read implicitly as a promise, however, it would merely be a promise to amend one clause in Section 35 of the MLA—the clause which reserved an unrestricted 52½ percent share of mineral leasing proceeds for Alaska—so that it would apply to the *State* rather than the *Territory* of Alaska. In effect, it would be a promise to extend to the new State the same 52½ percent share that Congress had, just one year before, extended to the Territory. Nothing in Section 28(b) indicates that the State of Alaska, unlike all of the other States, would be forever immune from subsequent amendments to the MLA.

Similarly, nothing in Section 28(b) purports to freeze in perpetuity Alaska's revenue share at a particular percentage (or, for that matter, a particular percentage of *gross* rather than *net* proceeds). Cf. *Watt* v. *Alaska*, 451 U.S. 259, 271 n.13 (1981) ("[I]t is almost inconceivable that Congress knowingly would have changed substantially a longstanding formula [under the MLA] for distribution of substantial funds without a word of comment"). Alaska's claim is inconsistent with the analysis in *Watt*, in which this

Court clearly indicated that Congress was free to alter Alaska's revenue share under the MLA at will. See *id.* at 274 (Stevens, J., concurring) ("The question of how to divide the revenue from oil and gas leases on public lands in the Kenai Peninsula is clearly a matter for Congress to decide. If Congress is displeased with the decision[] of this Court * * *, it may promptly reverse [it] by revising the relevant statute[]."); accord *id.* at 285 n.10 (Stewart, J., dissenting).[8]

Alaska's other claim, that Section 28(b) expresses a congressional promise to exploit mineral lands in order to generate royalties for the State, is even more farfetched. The plain language of Section 28(b) does not even hint at such a duty and, as the CFC held, for that duty to arise by implication would violate "two hundred years of law recognizing in the Federal Government a virtually unfettered discretion as to the management of its own lands." Pet. App. 44a

---

[8] Even if Section 28(b) could be read to freeze Alaska's MLA share at a particular percentage rate in perpetuity, it would guarantee the State only a *52½ percent* share of MLA proceeds. Section 28(b) makes no mention of a "90 percent" share. On its face, it applies only to Alaska's unrestricted 52½ percent share, which Congress established in 1957 to compensate for the fact that Alaska was not eligible for federal reclamation funds. Section 28(b) does *not* address Alaska's 37½ percent share (for support of public roads and schools), to which Alaska would automatically be entitled under Section 35 of the MLA once it became a State. See 30 U.S.C. 191 (Supp. V 1952 ed.) ("37½ per centum thereof shall be paid by the Secretary of the Treasury * * * to the State * * * within the boundaries of which the leased lands or deposits are or were located"). There is no allegation in this case that Alaska's actual receipts under the MLA have ever dropped below 52½ percent of gross proceeds.

(citing U.S. Const. Art. IV, § 3, Cl. 2; *Beecher* v. *Wetherby*, 95 U.S. 517 (1877); *Gibson* v. *Chouteau*, 80 U.S. (13 Wall.) 92 (1872)). Alaska's claim contravenes the long-standing presumption that Congress will not implicitly relinquish control over the management and disposal of public lands. See *Andrus* v. *Charlestone Stone Prods. Co.*, 436 U.S. 604, 617 (1978); *United States* v. *Sweet*, 245 U.S. 563, 567, 572-573 (1918).[9]

b. Alaska argues that support for its claims can be found, if not in the plain language of Section 28(b), then in the "legislative record" (Pet. 5) and the "circumstances surrounding" that Section's "formulation and enactment" (Pet. 11). Alaska's resort to legislative history, however, is unpersuasive.

(i). Alaska contends that the paramount concern during the statehood debates was the fear that Alaska's small population base would not be financially capable of shouldering the high costs of state governance. Then, according to Alaska, "a new and

---

[9] Alaska makes no mention of the state common law principles of oil and gas leasing on which it relied in making that argument below. Alaska argued below that Section 28(b) conveyed to the State the equivalent of what, in certain jurisdictions, is known as a "nonparticipating royalty interest." Alaska then asserted that the United States, as the owner of the residual "executive interest" in federally owned mineral lands in Alaska, assumed an implied duty to "use the utmost fair dealing and diligence in obtaining lease agreements in order to protect the royalty owner's interest." Alaska C.A. Br. 45 (quoting *Federal Land Bank of Houston* v. *United States*, 168 F. Supp. 788 (Ct. Cl. 1958) (construing Texas common law)). As the CFC correctly held, however, the common law of "nonparticipating royalties" has no application to this case. Pet. App. 41a-42a. Alaska does not seek review of that aspect of the CFC's ruling.

lucrative benefit was added to the statehood package." Pet. 3. In March 1957, Senator Barrett of Wyoming proposed an amendment to the Senate statehood bill that would "give * * * the State of Alaska-to-be ninety percent of the income from the minerals under the Leasing Act royalties that come in *from now on out.*" Pet. 4 (quoting Sen. Barrett in *Alaska Statehood: Hearings on S. 49 and S. 35 Before the Senate Comm. on Interior and Insular Affairs*, 85th Cong., 1st Sess. 31 (1957) (*Alaska Statehood Hearings*) (C.A. App. A340)) (emphasis added by petitioner). Alaska argues that this "90 percent" provision was, in essence, the *sine qua non* of the statehood bargain—the term that ultimately "induced" (Pet. App. 36a; Alaska C.A. Br. 22, 29, 32) a reluctant Alaskan people to "assume the burdens" (Pet. 25) of state governance.[10]

Alaska's reading of the record is flawed for a number of reasons. At the outset, Alaska overstates the extent to which Alaska's alleged inability to shoulder the costs of state governance was viewed as a major obstacle to statehood. By 1958, the Territory of Alaska was already providing "the basic services of State government except those precluded by the organic act," while at the same time experiencing a net budget *surplus*—notably without any need for a sales tax or a significant property tax. S. Rep. No. 1163, 85th Cong., 1st Sess. 13 (1957) (C.A. App. A229).

---

[10] Alaska attempts to attach even greater significance to the Barrett proposal by asserting that it followed "on the heels of Alaska's first major oil strike." Pet. 3. Alaska's chronology is backwards. Oil was discovered on the Kenai peninsula in July 1957, several months after Barrett introduced his amendment. See Pet. App. 84a.

For that reason, the Senate Report declared that the Territory was in "an enviable fiscal position." *Ibid.*[11]

Alaska also exaggerates the relative significance of Section 28(b) in the overall mix of property grants and revenue sharing provisions contained in the statehood bill. As noted above, by far the most significant potential source of revenue for the new State was the enormous grant of public lands, including lands rich in mineral deposits. Furthermore, although the statehood act's revenue-sharing provisions would provide a significant additional source of revenue for the State, Section 28(b) was only one of numerous such provisions in the Act, and nothing in the legislative history cited by Alaska indicates that Section 28(b) was, unique among those provisions, intended to be an "irrevocable" or "unalterable" grant.

Moreover, Alaska fails to identify a single statement in the legislative record that expressly acknowledges either of the promises that Alaska alleges. At best, the statements on which Alaska relies acclaim the statehood bill's revenue sharing provisions (of which Section 28(b) was only one) as an important means of "offsetting" the costs of statehood. They declare, for instance, that such provisions will "have a tremendous impact on the ability of the new State to provide the essential resources to support itself." Pet. 6 n.4 (quoting Sen. Jackson, 104 Cong. Rec. 12,208 (1958) (C.A. App. A638)). It does not

---

[11] Similarly, the Department of the Interior noted in a memorandum submitted to Congress in 1958 that Alaska's territorial government had the second highest per capita revenue in the Nation and was the only state or territorial government in the Nation with no outstanding indebtedness. 104 Cong. Rec. 12,332-12,333 (1958) (C.A. App. A674-A675).

follow, however, that Congress intended to render Alaska forever immune from subsequent changes to the MLA. While Section 28(b) was obviously intended to contribute to the new State's financial well-being, it accomplished that goal by simply providing that the State could participate in the pre-existing revenue sharing formula that had been extended to the Territory in 1957.[12]

Finally, Alaska's portrayal of Section 28(b) as an "inducement" is undermined by the fact that, by the time the ASA was enacted, Congress had already amended the MLA to raise Alaska's share of mineral leasing proceeds to 90 percent. Thus, the Alaskan government would be entitled to 90 percent of proceeds under the MLA whether or not the people of Alaska voted in favor of statehood.

(ii). Alaska fails to address three crucial pieces of legislative history, each of which undermines its arguments. First, as Alaska notes (Pet. 4), Section 28(b) had its genesis in Senator Barrett's amendment to the Senate statehood bill, introduced in March 1957. See *Alaska Statehood Hearings* 67 (C.A. App.

---

[12] Alaska cites a statement in the Senate Report recognizing that "[s]ome of the additional costs connected with statehood will be met by granting the State a reasonable return from Federal exploitation of resources within the new State." Pet. 6 n.4 (citing S. Rep. No. 1163, *supra*, at 3 (C.A. App. A224)). That statement, however, refers not just to Section 28(b), but also to provisions in the statehood bill that would provide the State with 70 percent of net proceeds from sales of seal and sea-otter furs from the Pribilof Islands; 90 percent of coal leasing profits; 5 percent of net proceeds from sales of public lands; and 37½ percent of proceeds derived from national forests. More to the point, it says absolutely nothing about any of those revenue shares being irrevocable or lasting in perpetuity.

A358). The Barrett amendment, however, was modeled after a similar bill, then being considered in the House, to amend the MLA through stand-alone legislation—the bill Congress later enacted in July 1957 as Public Law 85-88. The only difference was that Senator Barrett believed that "the statehood bill was the proper place to insert such a provision." *Ibid.* Significantly, Senator Barrett acknowledged that the purpose of his proposal, like that of the House bill, was to redress the perceived "unfairness" in the treatment of Alaska vis-à-vis the reclamation States under the *then-existing* MLA framework. *Id.* at 30-31, 68 (C.A. App. 340, 359). Furthermore, Senator Barrett understood that Alaska's 52½ percent share would be subject to change if Alaska's disparate treatment under the MLA ceased.[13]

Second, a version of Senator Barrett's amendment was also included in the House statehood bill (again, before the enactment of Public Law 85-88). As the House Committee Report accompanying that bill explained, the purpose of that provision was to rectify the perceived disparate treatment of Alaska under the then-existing MLA revenue-sharing formula:

> [S]ection 28 amends the [MLA] by granting 52½ percent per annum of the net proceeds * * * to the State of Alaska for disposition by the legislature thereof.

---

[13] Senator Barrett introduced a letter to Congress from the Assistant Secretary of the Interior, which stated that, "[i]f the reclamation laws should be extended to Alaska, the Department *would give consideration to the desirability of having the additional 52½ percent of the proceeds derived from Alaska paid into the reclamation fund.*" *Alaska Statehood Hearings* 68 (C.A. App. A359) (emphasis added).

> *The payment of these proceeds is recommended in return for Alaska not being covered by the Reclamation Act of 1902, as amended.*

H.R. Rep. No. 624, 85th Cong., 1st Sess. 8 (1957) (C.A. App. A280) (emphasis added). See also *id.* at 23 (C.A. App. A287). Conspicuously absent is any indication of an intent to render Alaska immune from any future changes in the MLA.

Finally, the Senate Committee Report of August 29, 1957, is highly probative, as it is the only significant piece of legislative history that was published after Congress enacted Public Law 85-88. In its analysis of Section 22 of the Senate statehood bill (the precursor to Section 28(b) of the ASA), the Report explained that:

> Section 22 is an amendment adopted by the committee for the purpose of authorizing payment to Alaska of 90 percent of the proceeds derived in Alaska under the [MLA] and the Alaska Coal Leasing Act. *This merely applies the provisions of [Public Law 85-88] to the State of Alaska, whereas it presently applies to the Territory.*

S. Rep. No. 1163, *supra*, at 29 (C.A. App. A237) (emphasis added). See also *id.* at 3 (C.A. App. A224) ("Section 22 of the bill extends to the State the provisions of [Public Law 85-88], which was approved July 10 of this year. * * * Without section 22 in the bill, the new State would not be within the purview of the 1957 act."). The Senate Report's analysis is powerful evidence that Section 28(b), whether construed as a bargained-for promise or as ordinary legislation, was merely intended to substitute the State of Alaska into the already-existing MLA formula that had been

extended to the Territory of Alaska under Public Law 85-88.

2. Alaska asserts that the CFC erred by "focus-[ing] almost exclusively on *Congress'* intent in enacting the Statehood Act," while disregarding the "intent and understanding" of the Alaskan people when they ratified the statehood "compact." Pet. 23. It contends that the intent of *both* parties "is entitled to equal consideration." *Ibid.* Alaska argues that this Court should grant certiorari "to clarify the weight that should be given to such extrinsic evidence of the parties' intent in construing statehood compacts." *Ibid.* Alaska's argument, however, is without merit.[14]

---

[14] This Court has had several occasions to construe the ASA, yet in each case it has applied ordinary principles of statutory interpretation, looking exclusively to congressional intent. See, *e.g.*, *United States* v. *Alaska*, 117 S. Ct. 1888, 1909-1912, 1919 (1997); *Organized Village of Kake* v. *Egan*, 369 U.S. 60, 65-71 (1962); *Metlakatla Indian Community* v. *Egan*, 369 U.S. 45, 56-59 (1962). Notably, both *Kake* and *Metlakatla* involved construction of Section 4 of the ASA, the sole provision in the Act that purports to establish a "compact." Yet, both decisions turned on congressional intent, with no suggestion that the understanding of Alaskans was relevant. While the Court in *Kake* stated that "Section 4 must be construed in light of the circumstances of its formulation and enactment," 369 U.S. at 65, the Court there was referring to a standard tool of statutory construction whose purpose, ultimately, is to gain insight into what Congress intended.

Indeed, Alaska cannot cite a single case in which this Court has construed any statehood Act without looking exclusively to congressional intent. Alaska, for example, cites (Pet. 14) *Andrus* v. *Utah*, 446 U.S. 500, 507 (1980), in which this Court said that certain land grant provisions in the Utah enabling Act embody a " 'solemn agreement' which in some ways may be analogized to a contract between private parties," but the

At the outset, Alaska assumes that Section 28(b) is a part of the "compact" that was the subject of the Section 8 statehood referendum. That assumption is incorrect. Section 8 put before the people three specific propositions. The third proposition, which is the linchpin of Alaska's argument (Pet. 16), asked for the people's consent, *inter alia*, to "[a]ll provisions of the [ASA] * * * prescribing the terms or conditions of the *grants of lands or other property* therein." § 8(b), 72 Stat. 344 (Pet. App. 59a) (emphasis added). The highlighted phrase, however, does not encompass Section 28(b). The only "grants of property" in the Statehood Act are those contained in Section 6, a fact confirmed by Section 5. See 72 Stat. 340 (Pet. App. 50a-51a) ("Except as provided in section 6 hereof, the United States shall retain title to all property, real and personal, to which it has title.").[15]

Furthermore, Section 8(b) of the Statehood Act provided for the people of Alaska to consent not only to the grants of lands or other property to Alaska, but

---

Court in that case nonetheless looked exclusively to Congress's intent in construing the meaning of those provisions. See *id.* at 507-510, 520. Alaska's theory of interpretation is thus without any support in this Court's jurisprudence. In any event, as explained *infra*, there is no need to reach that issue because it simply makes no difference in this case. Alaska's claims fail, even under Alaska's own theory of interpretation.

[15] If the text were not clear enough, the Senate Committee Report, which discusses Section 6 (and *not* Section 28(b)) under the heading, "Grants of Land and Other Property," makes clear that "Section 6 is the section authorizing grants of property to the new State." S. Rep. No. 1163, *supra*, at 16 (C.A. App. A231). As Section 28(b) was not ratified by the Alaskan people, the popular understanding of that provision's meaning is not directly relevant, even under Alaska's logic. See, *e.g.*, Pet. 19 n.11.

also to the provisions of the Statehood Act "reserving rights or powers to the United States." 72 Stat. 344 (Pet. App. 59a). As noted above (see pages 4-5, *supra*), Section 4 of the Statehood Act provides that the State disclaims all right and title to lands or other property not granted by the Act, "the right or title to which is held by the United States or is subject to disposition by the United States"—language that unquestionably includes mineral lands of the United States that are subject to leasing under the MLA—and that such lands or property "shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority," except to the extent Congress otherwise provided. 72 Stat. 339 (Pet. App. 50a). That express retention of absolute jurisdiction and control over mineral lands held by the United States cannot be squared with petitioner's assertion that the United States made an enforceable and perpetual promise to develop those minerals for the benefit of Alaska and to condition the United States' disposition of those minerals on the payment of 90% of royalties to Alaska.

In any event, the CFC did not, as Alaska asserts, disregard Alaska's extrinsic evidence in this case. To the contrary, after careful consideration of that evidence, the CFC determined that it was not probative. Alaska's evidence primarily consists of speeches delivered by Secretary of the Interior Seaton that, according to Alaska, reflect the Alaskans' understanding of the referendum propositions. See Pet. App. 80a-94a. The CFC correctly found that "[t]here is nothing in [Secretary Seaton's] statements specifically promising that Alaska would receive 90 percent of mineral leasing revenues in perpetuity or that the Federal Government would actively develop [the

Arctic National Wildlife Refuge] or other areas for leasing." *Id.* at 36a. Rather, the Secretary's comments confirm that the effect of Section 28(b) was merely to continue Alaska's pre-existing treatment under the MLA. See, *e.g.*, *id.* at 84a (since the passage of Public Law 85-88, "the Territory has received 90 percent of all oil lease revenues; *the State of Alaska will continue to do so*") (emphasis added); *id.* at 94a (ASA "*reaffirms* Alaska's preferential treatment in receiving 90 percent of all revenues from oil, gas, and coal leasing on the public domain") (emphasis added).[16]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

LOIS J. SCHIFFER
Assistant Attorney General

ROBERT L. KLARQUIST
BRUCE M. LANDON
MARGARET W. SWEENEY
ETHAN G. SHENKMAN
Attorneys

JANUARY 1998

---

[16] Because Alaska's extrinsic evidence is nonprobative, there is no need to remand this case for "further factual development as to the parties' intent." Pet. 22 n.13. For the same reason, there is no need to hold this case pending disposition of *New Jersey* v. *New York*, No. 120, Original—a case concerning an interstate compact, not a statehood enabling Act—regardless of whether that decision will "address the appropriate weight to be given extrinsic evidence in construing [interstate] compacts." Pet. 23 n.14.

Supreme Court, U.S.
FILED
JAN 12 1998
CLERK

(3)

No. 97-750

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

STATE OF ALASKA,
Petitioner,

v.

UNITED STATES,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

REPLY BRIEF FOR PETITIONER

JOHN G. ROBERTS, JR.
GREGORY G. GARRE
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5810

CHARLES E. COLE
406 Cushman Street
Fairbanks, Alaska 99701
(907) 452-1124

* Counsel of Record

BRUCE M. BOTELHO *
Attorney General
ELIZABETH J. BARRY
JOANNE M. GRACE
Assistant Attorneys General
STATE OF ALASKA
Department of Law
P.O. Box 110300
Juneau, Alaska 99811
(907) 465-3600

Counsel for Petitioner

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF AUTHORITIES

Cases — Page

Firestone Tire & Rubber Co. v. *Bruch*, 489 U.S. 101 (1989) 2

Florida Dep't of State v. *Treasure Salvors, Inc.*, 458 U.S. 670 (1982) 2

New Jersey v. *New York*, No. 120, Original, 1997 WL 291594 (U.S. Mar. 31, 1997) (special master report) 7, 8

Statute

Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339 (1958)

§ 8(b), 72 Stat. 343-345 6

§ 28(b), 72 Stat. 351-352 ..... *passim*

Legislative Materials

Alaska Statehood: Hearings on S. 49 and S. 35 Before the Senate Comm. on Interior and Insular Affairs, 85th Cong. (1957) 4, 5

H.R. Rep. No. 85-156 (1957) 5

S. Rep. No. 85-1163 (1957) 5

Other

Corbin on Contracts (1960) 3

Restatement (Second) of Contracts (1981) 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-750

STATE OF ALASKA,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

REPLY BRIEF FOR PETITIONER

1. The United States and the State of Alaska disagree on a matter of unquestionable significance to Alaska: the State's entitlement under the Alaska Statehood Compact to millions of dollars in mineral leasing revenues, a stream of revenue that both the United States and Alaska viewed as key to the financial viability of the new State. This case stands to decide that issue once and for all, and for that reason alone is unusually important. As explained in the petition, however, the significance of this case extends far beyond Alaska. At bottom, this case tests the obligation of the United States to keep its word in establishing the terms and conditions of statehood, a matter of general importance to all States, as well as those territories or commonwealths contemplating statehood, and of momentous importance to our federal system of government.

In its Opposition the United States says little to call into question the overriding importance of this case. What it does say simply sharpens the fundamental disagreement between the parties on the construction and enforceability of statehood compacts, and underscores the need for this Court's review.

2. The United States begins by suggesting that the threshold question presented—whether the Court should clarify the existing uncertainty over whether a statehood compact should be construed as both a statute and a contract or merely as routine legislation—is "academic." Opp. 11. Significantly, the United States does not dispute the current doctrinal confusion over this fundamental question, which was expressly acknowledged by the Court of Federal Claims. *See* Pet. App. 28a; Pet. 14-19. Nor does it assert that this question is not actually before the Court (since it indisputably is). Instead, the United States simply urges the Court to avoid this important question altogether on the ground that it does not matter whether the Compact is interpreted as a statute or a contract.

It plainly does. Whether a court begins from the basic premise that the Compact should be construed as routine legislation or as a contract between two separate parties establishes the focal point of the entire inquiry on which this case turns. The overriding objective in construing a contract is of course to give effect to *both* parties' intent,[1] whereas the overriding objective in construing a statute is to give effect to *Congress'* intent. Moreover, in giving ef-

[1] *See* Pet. 19 (discussing authorities). *See also Florida Dep't of State* v. *Treasure Salvors, Inc.*, 458 U.S. 670, 712 (1982) (White, J., joined by Powell, Rehnquist, and O'Connor, JJ., concurring in the judgment in part and dissenting in part) ("The intention of the parties upon the making of the contract, of course, governs the interpretation of the instrument."); *Firestone Tire & Rubber Co.* v. *Bruch*, 489 U.S. 101, 112-113 (1989) (the basic objective in construing a contract is to give effect to "parties' intent," evidenced by the terms of the contract as well as "other manifestations" of such intent).

fect to the parties' intent in construing a contract, a court will frequently look to extrinsic evidence of that intent, including the circumstances surrounding the formation of the contract and other manifestations of the parties' understanding as to the bargain struck. *See* Pet. 19; 3 *Corbin on Contracts* § 536, at 28 (1960); *Restatement (Second) of Contracts* § 202(3)(a) (1981). Such evidence, however, is disfavored as a matter of statutory interpretation.

The United States argues that, in determining whether Alaska is entitled to the disputed mineral leasing revenues, a court should "look[] exclusively to congressional intent," eschewing any consideration of "the intent and understanding of the Alaskan people when they ratified the statehood compact." Opp. 21 & n.14 (internal quotation marks omitted). *See also* Br. for United States (Fed. Cir.), pp. 18-19 (extrinsic evidence of the parties' intent is "not entitled to *any* interpretative weight in construing Section 28(b)") (emphasis added). It is easy to see why the United States is so eager to avoid consideration of such evidence; as discussed in the petition, Pet. 19-23, that evidence amply confirms that the Compact Alaskans believed they had accepted in agreeing to statehood is materially different from the one being thrust upon them now by the United States.

The question of Alaska's rights and responsibilities under the Compact effecting its admission to the Union is too important to be left to a transparently result-oriented analysis founded upon the dubious supposition that it does not matter whether the Compact is construed as a statute or a contract, two entirely different inquiries. The Court should resolve the existing uncertainty over the nature of statehood compacts and decide the threshold question presented. It is only after that fundamental question is resolved that a court may fairly address Alaska's claims by interpreting the Compact in light of a firm understanding of whose intent governs—that of Congress or of both parties—and of what weight to give the extrinsic evidence of Compact formation—significant or none.

3. Because it ducks the threshold question presented, the United States devotes the bulk of its Opposition to the merits of Alaska's claims (largely from its skewed perspective that the Statehood Compact should be construed like a run-of-the-mine statute), an endeavor typically reserved for merits briefing. In doing so, the United States makes several misleading and incorrect statements as to the meaning of Section 28(b) of the Alaska Statehood Compact. Properly construed, however, Section 28(b) plainly embodies a promise that the new State of Alaska would receive—as part of the consideration for accepting the burdens and obligations of statehood—"ninety percent of the income from the minerals under the Leasing Act royalties that come in *from now on out.*" *Alaska Statehood: Hearings on S. 49 and S. 35 Before the Senate Comm. on Interior and Insular Affairs*, 85th Cong. 30-31 (1957) (Sen. Barrett) (emphasis added).[2]

For example, the United States astonishingly asserts that the ninety percent provision was enacted "separate and apart from statehood." Opp. 3. The legislative record

---

[2] The United States repeatedly asserts that Alaska claims an "irrevocable right" to these revenues "in perpetuity." Opp. I, 9, 13, 17. To be clear, Alaska asserts the right of any typical contract party: to retain the benefit of its bargain for the duration of the agreement and to prevent unilateral abrogation of its rights under the agreement. As noted in the petition, Alaska recognizes that the Statehood Compact may be and has been modified in certain respects, but its " 'position has always been that the United States cannot unilaterally amend [it],' " Pet. 17 n.10 (quoting Alaska Attorney General Opinion), which is precisely what the United States has attempted to do in altering the long-established formula for allocating mineral leasing revenues. If the United States meant something other than "in perpetuity"—hardly a startling concept in any event in the case of exhaustible mineral reserves—its representatives should not have used terms such as "from now on out," *Hearings on S. 49 and S. 35, supra*, at 31, and "will continue to do so," Pet. App. 84a (Secretary Seaton). Alaskans are a plain-speaking people who tend to believe that people mean what they say.

directly refutes such a revisionist notion. The overriding purpose of the ninety percent provision—first introduced as an amendment to the 1957 *statehood* bill by Senator Barrett—was to give the new State "a chance to develop and to become one of the strong States of the Union." *Hearings on S. 49 and S. 35, supra,* at 30-31. The Department of the Interior specifically agreed that this provision should be included in the Compact. H.R. Rep. No. 85-156, at 2-3 (1957). When it enacted the 1958 Statehood Act, Congress viewed the ninety percent provision as a part of the Compact. *See* Pet. 5-6 (citing legislative record). And, when Secretary Seaton personally urged Alaskans to ratify the Compact, he made clear that the ninety percent provision was in fact a part of that Compact, *see* Pet. 7-8, a view that was reaffirmed as recently as January 1995 by the Department of the Interior. *Id.* 20-21 n. 12 (citing Department release concerning 1994 revenues).

The United States continues to assert that Section 28(b) was simply a "technical" provision of the 1958 Statehood Bill. Opp. 6. But the legislative record confirms Alaska's understanding that this provision was a "major" component of the Compact, included to help ensure that "the additional costs connected with statehood [would] be met." S. Rep. No. 85-1163, at 2-3 (1957). *See also* authorities cited at Pet. 5-6 & n.3.[8] The United States similarly sug-

---

[8] Section 28(b) was not, as the United States asserts, "merely intended to substitute the State of Alaska into the already-existing MLA formula that had been extended to the Territory of Alaska under Public Law 85-88." Opp. 20-21. As the above-cited authorities confirm, it was included in the Compact to accomplish far more than such a technical substitution. Indeed, even the Court of Federal Claims dismissed the federal government's assertion "that section 28(b) was not a substantive part of the compact," holding instead that "[i]t was plainly viewed as one component in an effort to ensure that Alaska was financially viable," and "clearly was part of a group of provisions that, together, ensured the financial viability of Alaska." Pet. App. 33a. If Congress had wanted merely to effect a technical amendment to the MLA, it could have done so

gests that Section 28(b) was a relatively insignificant carrot to induce Alaskans into accepting statehood, given "the overall mix of property grants and revenue sharing provisions contained in the statehood bill." Opp. 17; *see id.* 18 & n.12. The pertinent question, however, is whether the ninety percent provision was embodied in the Compact, not whether the federal government today views it as a "relative[ly] significan[t]" component of that agreement. *Id.* 17. The decision of the people of Alaska to ratify the Statehood Compact was based on *all* of the land and property grants embodied in the Compact and touted by the United States in urging ratification, including the ninety percent provision. The United States is not free to pick and choose which of its provisions are significant enough for it to honor.

Pulling out all the stops, the United States claims that Section 28(b) is not even part of the Compact ratified by Alaskans. Opp. 22-23. That surely would come as a shock to the Alaskans who ratified the Compact; they were specifically asked to ratify "[*a*]*ll* provisions of the [Statehood Compact] * * * prescribing the terms and conditions of the grants of lands or *other property* therein made to the State of Alaska." Alaska Statehood Act, § 8(b), 72 Stat. 339, 344 (1958) (emphasis added). *See* Pet. 16. To secure ratification, Secretary Seaton himself "barnstormed" Alaska on the eve of the referendum "to make clear the effect of the Enabling Act and the propositions upon which [Alaskans] will vote." Pet. App. 88a (Anchorage Address). In doing so, he told Alaskans that the propositions "add up to one plain question: 'Do you want statehood now?' " *Id.* 88a-89a. And, in urging Alaskans to answer that question in the affirmative, he specifically emphasized that the Compact "reaffirms Alaska's preferential treatment in receiving 90 percent of all revenues from oil, gas, and coal leasing on the public domain."

---

without going out of its way to incorporate the ninety percent provision in the Statehood Compact.

Id. 94a. *See* Pet. 7-8. Alaskans would have been dumbfounded if the United States had suddenly restricted those revenues in January 1959, immediately after President Eisenhower had certified Alaska as the Nation's 49th State; the passage of time may have muted the outcry but in no way diminishes the United States' duty to honor the promises it made in securing statehood.

The United States even claims that "Alaska fails to identify a single statement in the legislative record that expressly acknowledges either of the promises that Alaska alleges." Opp. 17. That is preposterous. As explained in the petition, the legislative record resounds with evidence that Congress appreciated that the Alaska Statehood Compact—quite unlike ordinary legislation—was irrevocable, Pet. 17 (citing legislative materials), and that the ninety percent provision was an important component of the Compact designed to ensure (along with the other property grants) that the new State would have the financial wherewithal to support itself, *id.* 5-6 & nn. 3-4, 15-16 (same). The fact that the United States focuses solely on the "legislative record" is indicative of its position that no other indicia of the parties' intent in consummating the Compact is relevant. As explained in the petition, that position is doctrinally flawed. But the United States is forced to advance it, because the extrinsic evidence of the parties' intent—especially Alaskans'—overwhelmingly points to the conclusion that the United States has gone back on its word.

4. At a minimum, the Court should hold this case pending its disposition in *New Jersey* v. *New York*, No. 120, Original. As is readily apparent from the Report of the Special Master in *New Jersey*, *see* 1997 WL 291594, at *15-*16, *23-24, *34-*45 (U.S. Mar. 31, 1997), as well as from the parties' exceptions to that Report, *see* Exceptions of the State of New York to the Report of the Special Master, pp. i, 11-21; Exceptions of the State of New Jer-

sey and Brief for the State of New Jersey in Support of Exceptions, pp. 6-10, 28-38, *New Jersey*, like this case, turns largely on a question of compact construction and, in particular, the weight to give extrinsic evidence of the parties' intent in entering into the compact.[4]

If—as seems likely based on the manner in which the case has been litigated thus far—this Court's decision in *New Jersey* addresses the proper construction of compacts, as compared with ordinary legislation, and, more particularly, the appropriate weight to give extrinsic evidence in construing such agreements, the Court should grant the writ in this case, vacate the judgment below, and remand for reconsideration in light of *New Jersey*. Alaska and the lower courts should be given the benefit of this Court's most recent pronouncement on the proper application of such basic principles before the door is shut once and for all on the important matters disputed in this case. This is especially true given that this case was decided on summary judgment before the opportunity—specifically requested by Alaska—for further inquiry into and development of the extrinsic evidence of the parties' intent in entering into the Statehood Compact. *See* Pet. 22 n.13.

---

[4] The United States suggests in passing that *New Jersey* is distinguishable simply because it involves an "interstate compact, not a statehood [compact]." Opp. 24 n.16. But, as explained in the petition, statehood compacts share the same contractual attributes as interstate compacts and, like interstate compacts, are embodied in federal legislation. *See* Pet. 15-17. The principles of compact construction adopted and applied by the Court in *New Jersey* therefore would be applicable to the Compact at issue in this case.

For the foregoing reasons, and those in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN G. ROBERTS, JR.
GREGORY G. GARRE
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5810

CHARLES E. COLE
406 Cushman Street
Fairbanks, Alaska 99701
(907) 452-1124

* Counsel of Record

BRUCE M. BOTELHO *
Attorney General
ELIZABETH J. BARRY
JOANNE M. GRACE
Assistant Attorney General
STATE OF ALASKA
Department of Law
P.O. Box 110300
Juneau, Alaska 99811
(907) 465-3600

Counsel for Petitioner